Occupational Health and Safety (OHS) Regulation and Code Amendments

Technical Briefing

May 22, 2018
Agenda

- *Occupational Health and Safety Act* prompted changes
- Stakeholder consultation
- OHS Regulation amendments
  - Joint work site health and safety committees (HSC) and health and safety representatives (representatives)
- OHS Code amendments
  - Harassment
  - Violence
  - Joint work site health and safety committees and health and safety representatives
  - Workplace Hazardous Materials Information System
- Administrative Amendments
- Implementation
Occupational Health and Safety Act

- The new OHS Act sets a framework for HSC and representatives, and prevention of workplace harassment and violence
  - HSC and representatives will now be required for work sites of a certain size
  - Employers and supervisors are responsible to prevent harassment and violence and workers to refrain from these activities
Regulatory Changes

- Additional detail is now provided in regulation to clarify how employers will meet their new responsibilities
  - Prevention of and addressing workplace harassment and violence
  - HSCs and representatives’ functions, approvals and training
- Regulatory updates also include:
  - Workplace Hazardous Materials Information System (WHMIS) 2015 changes
  - Administrative amendments to align the OHS Regulation and OHS Code with the new OHS Act
Stakeholder Consultation
Consultation Summary

• Consultation was open to Albertans from March 12 to April 9, 2018
• Received 132 written submissions from employers, workers and OHS professionals. General comments include:
  – Desire for government to provide resources such as guidelines, approved training resources and templates
  – Important to balance protection of privacy with OHS, communication of threat assessments, H&S records
Changes to the OHS Regulation
Roles and Responsibilities of Work Site Parties

• The new OHS Act introduced the supervisor as a work site party
• Requirements for the use of personal protective equipment should align with roles and responsibilities in the new OHS Act
• If a worker must use or wear specific equipment, the employer and supervisor must ensure that they do so
  – This is a ticketing provision, employers and supervisors could receive OHS violation tickets in case of infraction
HSC and Representatives

• The new OHS Act requires HSC members and representatives to receive training
• The Minister will establish the curriculum to train HSC co-chairs and representatives which includes:
  – Roles and responsibilities of work site parties
  – Rights of workers
  – How the designated organization will address the legislative responsibilities of workers and employers in training delivery
  – Balanced delivery
HSC and Representatives

• The OHS Act allows an employer to apply for an approval to vary from the HSC or the designation of a health and safety representative legislative requirements

• For an application, the employer must provide:
  – Name and contact information
  – Numbers of workers at work sites
  – Type and nature of work
  – Number and nature of injuries or incidents reported and investigated during past year
  – Proposed procedures for workers to communicate issues
  – Proposed alternatives to a HSC or representative
  – Proposed work site inspection schedule
  – Documentation showing support from workers
HSC and Representatives

• Criteria added for a Statutory Director to consider when deciding if an approval may be issued:
  – Information provided by the employer
  – The effect an approval could have on the health and safety of a worker or other person
  – Relevant history of compliance or non-compliance with the OHS legislation
  – Any other criteria considered appropriate

• If an approval is issued and there are subsequent changes to the information, the employer must notify the Director of those changes in writing
Changes to the OHS Code
Health and Safety Committees and Representatives
HSC and Representatives

• HSC must establish a terms of reference with the following elements:
  – Representation of health and safety concerns by membership
  – Process for replacing a member during their term of office
  – Dispute resolution process when a committee fails to reach a consensus on making a recommendation to the employer, prime contractor or owner
  – Processes for coordinating with other HSC established by the employer

• HSC must inspect each work site at least once before each quarterly committee meeting to identify hazards that have not been controlled

• HSC, its members or representative must not disclose a worker’s personal health information or any other personal information unless required by law
HSC and Representatives

- Employers, contractors and prime contractors must:
  - Consult and cooperate with HSC and representatives to develop OHS policies, procedures and codes of practice
  - Provide members of committees and representatives with reasonable opportunity to inform workers on OHS matters
  - Ensure that HSC and representatives are allowed to examine records, policies, plans, procedures, codes of practice, reports or manufacturer specifications
  - Distribute to HSC and representatives any information or documents addressed to them as soon as reasonably practicable
HSC and Representatives

• Where feasible, OHS officers conducting inspections of work sites must request a HSC co-chair who represents the workers or the co-chair’s designate, or a representative be present at the inspection
  – The employer must provide that person with time away to attend the inspection
HSC and Representatives Training

• The new OHS Act requires HSC co-chairs and HS representatives to be allowed 16 hours or two shifts for training for their roles
• Employers and prime contractors must use an organization approved by the Minister for the required training for HSC co-chairs, members and representatives
• Training criteria and a list of approved providers are under development and will be posted online when available
• Information on how to become an approved trainer will be available soon
HSC and Representatives Training

• Free introductory 2-hour course for co-chairs and representatives developed in partnership with the Canadian Centre for Occupational Health and Safety

• Available at: https://www.ccohs.ca/distributors/alberta/

• Participants will receive a certificate and a two hour credit toward their mandatory training requirements

• Facilitated learning will be approximately 6 hours
Violence and Harassment
Violence

• Employers must develop and implement a workplace violence prevention plan with their HSC or representative if in place, or if there is none, then with affected workers

• The plan must include policy and procedures

• The violence prevention policy must include set statements:
  – The employer is committed to addressing violence
  – Incidents will be investigated and corrective action taken
  – Confidentiality of information will be maintained
  – Policy is not intended to discourage workers from exercising other rights under law
Violence

- Violence prevention procedures must include:
  - Measures to eliminate or control violence hazards
  - Information about the hazard in the workplace
  - How to disclose information on hazards of violence
  - How a worker can obtain immediate assistance when incidents occur
  - Reporting of incidents
  - Documentation and investigation of incidents
  - Informing affected parties of the outcomes of investigations
Violence

- Provisions were also added to Part 27 as a result of Bill 19, An Act to Protect Gas and Convenience Store Workers
  - A violence prevention plan is required with prescribed elements
  - Workers must be trained on the plan
  - Workers who work alone must wear a personal emergency transmitter
  - Customers must prepay for fuel (alternatives may be approved by a statutory Director)
Domestic Violence

• The definition of violence under the new OHS Act includes domestic violence

• The employer must take every reasonable precaution to protect workers and any other persons at the work site likely to be affected by domestic violence that comes into the workplace
Harassment

- Employers must develop and implement a workplace harassment prevention plan with their HSC or representative if in place, or if there is none, then with affected workers
- The plan must include a policy and procedures
- The harassment prevention policy must include the following:
  - The employer is committed to eliminating or controlling harassment
  - Harassment incidents will be investigated and corrective actions taken
  - Confidentiality of information will be maintained
  - Policy is not intended to discourage a workers from exercising rights under any other law, including the *Alberta Human Rights Act*
Harassment

• Harassment prevention procedures must include:
  – How workers report incidents
  – Documentation, investigation of incidents by the employer and prevention procedures
  – Informing affected parties of the outcomes of investigations
Harassment and Violence

- Employers must review the prevention plans in consultation with the HSC, representative, or affected workers, as appropriate.
- The review must take place on the earliest of:
  - When an incident occurs
  - If the HSC or representative recommend a review, or
  - Every three years
Harassment and Violence

• Employers must ensure workers are trained in
  – Recognition of harassment and violence
  – Policies and procedures and workplace arrangements the employer has developed
  – Appropriate response to incidents, including procedures for obtaining assistance
  – Procedures for reporting, investigating and documenting incidents
Harassment and Violence

• Employers must advise a worker reporting an injury or adverse symptom resulting from an incident of violence or harassment to consult a health professional of the worker’s choice for treatment or referral
  – Workers are advised to access their benefits from the Workers’ Compensation Board or the Employee and Family Assistance Program through the employer

• If a worker receives treatment for work related violence or harassment, the employer must not make a deduction from the worker's pay or benefits for the time during which a worker attends the session
WHMIS
Workplace Hazardous Materials Information System (WHMIS)

• Federal WHMIS legislation was changed in 2015
• WHMIS legislation is both federal and provincial:
  – WHMIS legislation for suppliers of chemicals is the federal *Hazardous Products Act* (HPA) and Hazardous Products Regulation which are administered by Health Canada
  – Alberta employer and workplace requirements for WHMIS are specified in Part 29 of the OHS Code
• The changes in the OHS Code align Alberta with the requirements for WHMIS 2015 that have been adopted in the rest of Canada
• For more information: WHMIS.org
Administrative Amendments
Administrative Amendments

• Repeal of provisions in the OHS Regulation and Code that were moved to the OHS Act, such as definitions.
• Changes to ensure consistency with terminology and context in the OHS Act as well as ensuring language aligns with the new provisions.
• Amending provisions for acceptances and approvals to align with sections 55 and 56 of the new OHS Act (for example, some existing approvals are now acceptances)
Implementation
Implementation

• The OHS Regulation and OHS Code changes come into force on June 1, 2018 along with the new OHS Act
• Information materials are being developed to include templates where appropriate
• OHS officers will work with employers ensuring changes have been successfully implemented. Officers will:
  – assess the level of risk associated with any outstanding issues
  – set reasonable timelines to improve any outstanding OHS requirements
• Resources will be available on the Alberta Labour website: alberta.ca/occupational-health-safety
Thank you

Questions?
## HIGHLIGHTS: Occupational Health and Safety (OHS) Code and OHS Regulation Changes

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<tr>
<th>Current requirement</th>
<th>Changes on June 1, 2018</th>
<th>Rationale</th>
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<tr>
<td><strong>OHS Regulation</strong></td>
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<td><strong>Approvals for joint work site health and safety committees (HSCs) and health and safety representatives (representatives)</strong></td>
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<td>New</td>
<td>Clarify is provided on how an employer can request a statutory Director approval under section 16(4) or 17(1) of the new OHS Act for variation in HSC or representative requirements and the considerations a Director may use in granting such an approval. An employer must notify the Director in writing if there are changes to the information associated with an issued approval.</td>
<td>The new OHS Act set out general requirements for the establishment of HSCs and designation of representatives. An approval can be issued to vary from the form and function of a committee or to vary from the designation of a representative. The changes provide clarity as to the information the employer or prime contractor must provide and criteria a Director may consider when making a decision to grant an approval.</td>
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<td><strong>Training for HSCs and health and safety representatives</strong></td>
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<td>New</td>
<td>The Minister will establish the curriculum for training for HSC co-chairs and representatives.</td>
<td>Section 29(1) and (2) of the new OHS Act sets requirements for required training of HSC co-chairs and representatives.</td>
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<td>New</td>
<td>The curriculum must include the roles and responsibilities, obligations of work site parties, the rights of workers and how the organization will address this in the training curriculum.</td>
<td>This change provides more clarity on who can provide training and minimum elements that should be included.</td>
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<td>If a worker is required to use or wear specific equipment, the employer must ensure that the worker uses or wears the equipment at the work site.</td>
<td>If a worker is required to use or wear specific equipment, the employer and supervisor must ensure that the worker uses or wears the equipment at the work site.</td>
<td>Bill 30 redefined and introduced new work site parties under the OHS Act. Supervisor is a newly defined work site party. This section is being updated to reflect the supervisor’s role. As this section is currently an OHS ticketable provision, both employers and supervisors would be subject to receiving OHS violation tickets (similar to a traffic ticket) in case of an infraction. This maintains existing OHS compliance practice.</td>
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<td><strong>Administrative changes</strong></td>
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<td>New</td>
<td>Repeal of provisions in the OHS Regulation that were moved to the OHS Act, such as definitions, reporting and other provisions on information transfer in the workplace.</td>
<td>Removes redundancy from the legislation.</td>
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### Current requirement | Changes on June 1, 2018 | Rationale
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New | Amend language to align with new provisions and terminology in the OHS Act. Also, section number references must be updated. | Ensures consistency of provisions in the OHS Regulation with those in the new OHS Act.
New | Amending provisions for acceptances and approvals. The new OHS Act contains changes to requirements for acceptances and approvals. The term “approve” (or variations of the term) is used in other contexts in the OHS Regulation so language was update. | Provisions in the OHS Code should reflect the amendments in the OHS Act for approvals and acceptances, as well as the use of the term “approved”.

### OHS Code

#### HSCs and health and safety representatives

| New | A HSC must establish a terms of reference that covers
- Representation by members
- Replacement of members
- Dispute resolution processes
- A process for coordinating with other HSCs established by the employer. | Provides clarity as to how to comply with the requirement in section 16(3) of the new OHS Act that requires a HSC to establish rules of procedures for fulfilling its duties.

If the Minister has designated the work site to have a HSC it must inspect the work site at least once before each regularly scheduled meeting.

| New | A HSC must inspect each work site at least once before each quarterly meeting to identify health and safety hazards that have not been controlled. | This expands on section 19(g) of the new OHS Act by providing more direction on the key function of HSCs and representatives to conduct work site inspections.

| New | The HSC, its members, and representatives must not disclose personal or health information unless the disclosure is required by law. | The purpose of this provision is to enhance privacy protection. While the new OHS Act does not explicitly authorize the HSC and representative to collect personal information, a committee member in the course of exercising their duties (i.e. participation in inspection) may come across personal information.

| New | The employer, contractor and prime contractor, if there is one:
- Must consult and cooperate with all HSCs and representatives, or affected workers (where there is no HSC or representative) in the development of policies, procedures and codes of practice required under the OHS legislation. | New provisions expand on section 21 of the new Act requirements for employer, contractor and prime contractor duties to work with a HSC or representative. For these to be effective mechanisms for worker participation, the employer and prime contractor must ensure that the committee or representative has the necessary ability and information to
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| • Ensure that committee members and representatives are provided with reasonable opportunity to inform workers at the work site of health and safety matters  
• Provide committees and representatives access to information maintained under the OHS legislation  
• Distribute information or documents addressed to the committee or representative as soon as practicable after it is received, but does not include a discriminatory action report. | conduct their work  
The provision also clarifies that discriminatory action reports produced in accordance with Section 36 of the OHS Act are not to be shared with HSC and representative. This offers privacy for sensitive information of workers. | |
| New | Employers must ensure HSCs and representatives receive training by a designated organization to meet the requirements of subsections 29(1) and (2) of the new OHS Act. | The new provisions provide clarity to the employer as to how obligations for training under section 29(1) and (2) of the new OHS Act are to be met. |
| If the Minister has designated the work site to have a HSC, co-chairs or their designates may be present at an OHS officer’s inspection, unless the officer asks them not to be due to special circumstances which would prevent proper inspection if they were present. | An OHS officer shall request the HSC worker co-chair, or their designate, or a representative to be present when conducting an inspection of a work site, if it is feasible to do so.  
If an officer makes a request for a worker representative presence at an inspection, the employer must provide the person with time away from work to attend the inspection. | The new provision clarifies the requirement in section 19 and 25 of the new OHS Act related to HSC and representative participation in OHS officer inspections of the work site. |

### Harassment and violence

<p>| An employer must develop a policy and procedures respecting potential workplace violence. | Employers must develop and implement a violence prevention plan that includes a policy with prescribed elements as well as violence prevention procedures with prescribed elements. This must be done in consultation with the HSC or representative, if there is one. At work sites without a HSC or representative, the affected workers must be consulted. | This clarifies actions employers must take to meet their responsibilities to prevent violence in new OHS Act. |
| New | An employer must take reasonable steps to protect workers and other persons from domestic violence that occurs at a work site. | While the former definition of violence included “all forms of violence”, the new OHS Act has an expanded definition of violence that specifies domestic violence is included. The new Act definition of violence is: |</p>
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| **New**             | Employers must develop and implement a harassment prevention plan that includes policy with prescribed elements as well as harassment prevention procedures with prescribed elements. This must be done in consultation with the HSC or representative, if there is one. At work sites without a HSC or representative, the affected workers must be consulted. | The new OHS Act defines harassment as: “means any single incident or repeated incidents of objectionable or unwelcome conduct, comment, bullying or action by a person that the person knows or ought reasonably to know will or would cause 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) A sexual solicitation or advance,

But includes any reasonable conduct of an employer or supervisor in respect of the management of workers or a work site” |
| **New**             | Violence and harassment prevention plans must be reviewed the sooner of:
- When an incident occurs
- When recommended by the HSC or
- Every three years. | For the plan to address the hazards, it must be reviewed on an ongoing basis to identify gaps in protections or new conditions that must be considered. |
### Current requirement

An employer must ensure that workers are instructed in
- How to recognize workplace violence
- The policy, procedures and workplace arrangements that effectively minimize or eliminate workplace violence
- The appropriate response to workplace violence, including how to obtain assistance, and
- Procedures for reporting, investigating and documenting incidents of workplace violence.

### Changes on June 1, 2018

Employers must ensure that workers are trained to
- Be aware of and recognize violence and harassment
- Violence and harassment policies, procedures and arrangements for their workplace
- How to respond to incidents and get assistance
- How to report on, investigate and document incidents.

### Rationale

Alignment with worker right to know about hazards that can affect them and to ensure that workers meet their obligations under the new OHS Act.

### An employer must ensure that a worker is advised to consult a health professional of the worker’s choice for treatment or referral if the worker

- Reports an injury or adverse symptom resulting from workplace violence, or
- Is exposed to workplace violence.

Employers must advise a worker exposed to violence or harassment to consult a health professional of the worker's choice for treatment or referral. If a worker receives treatment for work related violence or harassment, the employer must not make a deduction from the worker's pay or benefits for the time during which a worker attends the session.

This clarifies actions employers must take to meet their responsibilities to protect workers from violence or harassment under the new OHS Act.

### New

Cross-references on existing fuel and convenience store safety provisions are updated to align with the new content with no change in policy intent.

Alignment with newly added provisions for harassment and violence.

### Workplace Hazardous Materials Information System (WHMIS)


Update the provisions in the OHS Code for WHMIS 2015.

This aligns Alberta with the rest of Canada for WHMIS.

### Administrative changes

Change the name of the “OHS Code 2009” to the “OHS Code” to reflect the new mechanism for OHS Code updates.

Authority to make the Code was transferred to the Minister of Labour in Bill 30. The Code is now a ministerial regulation, rather than an adopted code.

Repeal of provisions in the OHS Code that were moved to the OHS Act, such as definitions and hazard assessment

Removes redundancy from the legislation.
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<td>Amend language to align with new provisions and terminology in the new OHS Act. Section number references must be updated.</td>
<td>Ensures consistency of provisions in the OHS Code with those in the new OHS Act.</td>
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<td>There are provisions in the OHS Code where a statutory Director can issue an approval.</td>
<td>Amend provisions for acceptances and approvals in the OHS Code. Amendment of the term “approve” (or variations of the term) when used in other contexts in the OHS Code.</td>
<td>Alignment with new provisions for acceptances and approvals in sections 55 and 56 of the new OHS Act.</td>
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