

PREPARING FOR THE TRANSITION:

Five Broad Areas of Alberta Bill 30

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This document as well as future revisions and additions, is available from:

Energy Safety Canada 5055 11 Street NE Calgary, Alberta T2E 8N4

TF 1 800 667 5557 T 403 516 8000 F 403 516 8166

NISKU

T 780 955 7770 1803 11 Street F 780 955 2454 Nisku, AB T9E 1A8

FORT MCMURRAY

T 780 791 4944 Box 13 - 8115 Franklin Avenue F 780 715 3945 Fort McMurray, AB T9H 2H7

BRITISH COLUMBIA

T 250 784 0100 2060 - 9600 93 Avenue F 250 785 6013 Fort St. John, BC V1J 5Z2

SASKATCHEWAN

T 306 842 9822 208 - 117 3 Street F 306 337 9610 Weyburn, SK S4H 0W3

Info@EnergySafetyCanada.com
Enrolment Services and Certificate of Recognition:
1 800 667 5557

EnergySafetyCanada.com

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1.0 INTRODUCTION

A comprehensive review of Alberta's Occupational Health and Safety (OHS) system was conducted in 2017. This review identified three key themes of particular importance in the effort to improve current workplace safety legislation. These themes include: clarifying **Responsibilities** of work site parties in legislation, improving **Worker Engagement** in OHS and a renewed focus on illness and injury **Prevention**. These findings contributed to recognizing a need for change; as formally issued in *Alberta Bill 30, An Act to Protect the Health and Well-being of Working Albertans*; effective June 1, 2018.

Energy Safety Canada hosted a stakeholder engagement workshop on March 23rd, 2018 to assist and support industry with understanding the impact and help de-risk the transition to Alberta Bill 30. The attending demographic was a broad representation from all industry sectors and provided a forum to create a collective understanding for how the implementation of Alberta Bill 30 would impact Alberta employers and workers alike.

This high-level review determined five broad areas that affect employers within Alberta Bill 30, including:

- 1. Prime Contractors
- 2. Supervisor Responsibilities
- 3. Competency
- 4. Joint Work Site Health and Safety Committees
- 5. Reporting Serious Injuries and Incidents

The internal responsibility system, as mandated in Canadian OHS Law, dictates that everyone in the workplace is responsible for occupational health and safety, according to their authority and control. As such, employers have the greatest degree of control and authority and have the most responsibilities. A thorough understanding of how Alberta employers will be affected becomes imperative to ensuring current and future workplace safety compliance.

This white paper is a resource to assist industry with understanding the changes; highlights the current OHS legislation and the changes to the OHS Act set forth by Alberta Bill 30, and outlines the impacts to employers within the context of the aforementioned five broad areas.

2.0 PRIME CONTRACTOR

2.1 CURRENT OHS ACT — VALID UNTIL MAY 31, 2018

The current legislation in the OHS Act defines prime contractors for a work site as "the contractor, employer or other person who enters into an agreement with the owner of the work site to be the prime contractor". In the instance that "no agreement has been made or if no agreement is in force, the owner of the work site becomes the prime contractor" (Sec.2(b)). Legislation also indicates that "[e]very work site must have a prime contractor if there are 2 or more employers involved in work at the work site" (Sec.3(1)).

An integral component of the existing OHS Act specifies the requirement for the prime contractor to "ensure, as far as it is reasonably practicable to do so, that [the] Act, the regulations and the adopted code" (Sec.3) are work site compliant.

The responsibility of the prime contractor as mandated in the current OHS Act is to:

- Establish a system to ensure compliance with legislation
- Coordinate, organize and oversee work to ensure health and safety of workers and others
- Cooperate with any person exercising duty under legislation
- Comply with legislation

2.2 ALBERTA BILL 30 — EFFECTIVE JUNE 1, 2018

The new OHS Act clarifies where a prime contractor is required and adds specificity to a work site to include "every construction and oil and gas sites and any other work site designated by a Director"²

The Government of Alberta website identifies that "every construction and oil and gas site must have a prime contractor whenever two or more employers engage in the work at the same site, even if they are not working at the same time".³

With respect to the identification of the prime contractor, the new OHS Act indicates that "the person in control of the work site shall designate in writing a person as the prime contractor of the work site" and that the "name of the prime contractor must be posted in a conspicuous place at the work site" (Sec.10(3)). In the case that "the person in control of the work site fails to designate a person as the prime contractor as required in subsection (2), the person in control of the work site is deemed to be the prime contractor" (Sec.10(4)). In addition, "employers must provide the prime contractor the names of the supervisors responsible for the workers at the work site".

An important change introduced in Alberta Bill 30 requires prime contractors to be responsible for "equipment, infrastructure and excavations that are designed, constructed, erected, or installed

¹ Occupational Health and Safety Act Chapter 0-2, Alberta Queen's Printer, Sec.3(2).

² Alberta Bill 30: An Act to Protect the Health and Well-being of Working Albertans, Sec.10(1)).

³ The Role and Duties of the Prime Contractor OHS information for workers, employers, and prime contractors https://www.alberta.ca/assets/documents/ohs-prime-contractors.pdf

⁴ Alberta Bill 30: An Act to Protect the Health and Well-being of Working Albertans, Sec.10(2)).

⁵ The Role and Duties of the Prime Contractor OHS information for workers, employers, and prime contractors https://www.alberta.ca/assets/documents/ohs-prime-contractors.pdf

by or on behalf of the prime contractor"⁴ and may include toilet facilities, scaffolds, guardrails, waste disposal, propane tanks for site heating, entry and exit ramps and fall protection anchorages.

The Act also identifies the requirement for prime contractors to ensure their "own activities do not create a hazard to the health and safety of others". Prime contractors may also be required to establish a written code of practice, make it readily available to workers and other persons at the work site and to supply copies of it to a Director. This code of practice must include "practical guidance on the requirements of the regulations or the OHS code applicable to the work site, safe working procedures in respect of the work site and other matters as required by a Director, the regulations or the OHS code" (Sec.62(2)).

The OHS Act now requires "employers and prime contractors to consult and cooperate with the Joint Work Site Health and Safety Committees and/or health & safety representative(s)(Sec.19)). Moreover, it states that when a Health and Safety Committee or Health and Safety representative makes a recommendation to remedy an OHS matter, the prime contractor must:

- resolve the matter within 30 days, or
- respond in writing how and when the concern will be addressed, or

If the employer or prime contractor disagree with the recommendation, they must provide reasons for not addressing the matter. Finally, if the matter cannot be resolved, any of the parties can refer it to an OHS officer for resolution.

Prime contractors also become responsible for establishing health and safety programs at the work site.

2.3 WHAT THESE CHANGES MEAN FOR EMPLOYERS

When Alberta Bill 30 comes into force on June 1, 2018, employers must be familiar with the revised definitions and responsibilities for prime contractors. Each work site must identify the prime contractor to fulfill the aforementioned responsibilities.

Although the prime contractor will assume a leading role in the work site health and safety, the OHS Act clearly indicates that work site health and safety is everyone's responsibility. A clear understanding of each person's individual roles and responsibilities must be established regarding the upcoming changes to the OHS Act.

A concerted focus on company education is paramount for employers to ensure health and safety compliance once Alberta Bill 30 is in force. This includes formalizing and updating existing procedures to align them with the revised legislation.

Preparing for the Transition: Five Broad Areas of Alberta Bill 30

⁶ Alberta Bill 30: An Act to Protect the Health and Well-being of Working Albertans, Sec.5(c)).

3.0 SUPERVISOR RESPONSIBILITIES

3.1 CURRENT OHS ACT — VALID UNTIL MAY 31, 2018

Alberta's existing roles and responsibilities for work site parties are not necessarily aligned with the rest of Canada. For example, supervisors, owners, service providers, self-employed persons, and temporary staffing agencies do not have specific roles or responsibilities in the current OHS Act.

3.2 ALBERTA BILL 30 — EFFECTIVE JUNE 1, 2018

The new Act defines "supervisor" as a person who has charge of a work site or authority over a worker. The Act also identifies the obligations of supervisors that are "reasonably practicable" — a term used in the OHS Act referring to the legislative "general duty" clause or "reasonable action". A supervisor's obligation is to:

- Ensure he/she is personally competent to supervise workers
- Take all precautions to protect worker health and safety
- Ensure workers perform their duties in accordance with requirements of legislation
- Ensure workers use hazard controls and personal protective equipment
- Advise workers of all known or reasonably foreseeable hazards
- Report OHS concerns
- Cooperate with any person exercising duty under legislation
- Comply with legislation

The new Act requires supervisors to ensure workers are not subjected to or participate in harassment or violence. Although physical violence is defined in the existing OHS Act, there are no definitions or explicit provisions for preventing workplace harassment. Alberta Bill 30 defines harassment as "any single 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, sexual orientation, and
- ii. Sexual solicitations or advances, but excludes any reasonable conduct or an employer or supervisor in respect of their management of the workers or a work site"⁷.

3.3 WHAT THESE CHANGES MEAN FOR EMPLOYERS

Employers must conduct an assessment to identify all personnel operating in a supervisory capacity and ensure they are both competent and equipped to meet their considerable legal obligations. The new Act's genericized description for what constitutes a "supervisor", however, may lead to confusion for employers when identifying which personnel are deemed supervisors; regardless of current job title. Determining if a person is a supervisor is an objective test based on the person's actual powers and responsibilities. Under the Occupational Health and Safety Act, having either charge of a workplace, or authority over a worker, is sufficient for a person to be a supervisor.

⁷ Alberta Bill 30: An Act to Protect the Health and Well-being of Working Albertans, Sec.3(c).

During this process of role identification, employers will also need to align their current definitions and responsibilities with those specified in the new Act, ensuring that everyone clearly understands their health and safety obligations; including prevention of harassment and violence.

4.0 COMPETENCY

4.1 CURRENT OHS ACT — VALID UNTIL MAY 31, 2018

Health and safety competency refers to an individual's ability to perform a task without putting the health and safety of themselves or others at significant risk. Current legislation states: "[t]he Alberta OHS Act, Regulation and Code combine to set out the legal requirements that employers and workers must meet to protect their own health and safety, and the health and safety of others who could be affected by what they do". This mandate represents the "minimum" required for an employer or worker to show due diligence. A failure to comply with health and safety legal obligations is in violation of the law and may be subject to penalties.

The OHS Act refers to the competency of workers where, "[a] worker who is not competent to perform work that may endanger the worker or others must not perform the work except under the direct supervision of a worker who is competent to perform the work" (Sec.14(1)). Although the principles of Alberta's OHS Act is based upon establishing the standards for health and safety practices in Alberta's workplaces, the Act does not specifically define competency and/or the methodology for which to guarantee work site competencies.

4.2 ALBERTA BILL 30 — EFFECTIVE JUNE 1, 2018

Alberta Bill 30 will introduce competency obligations for supervisors, service providers, and employers per below:

"Obligations of supervisors

Every supervisor shall

- (a) as far as it is reasonably practicable for the supervisor to do so,
 - (i) ensure that the supervisor is competent to supervise every worker under their supervision"⁹
- "Obligations of service providers

Every service provider shall

- (b) ensure that services provided to a person to meet an obligation in the Act, the regulations or the OHS code are completed by workers who are competent to provide those services" (Sec.2).
- "Obligations of employers
 - (b) that the employer's workers are supervised by a person who
 - (i) is competent, and
 - (ii) is familiar with this Act, the regulations and the OHS code that apply to the work performed at the work site" (Sec.3(1))

⁸ Occupational Health and Safety Act Chapter 0-2, Alberta Queen's Printer, Sec.14(1).

⁹ Alberta Bill 30: An Act to Protect the Health and Well-being of Working Albertans, Sec.4.

4.3 WHAT THESE CHANGES MEAN FOR EMPLOYERS

Alberta Bill 30 imparts specific competency responsibilities to supervisors, service providers and employers, respectively; and is perhaps one of the *most significant* changes. Until now, the OHS Act has only provided guidelines and "Suggested Actions for the Employer" ¹⁰.

The key point of difference between current and upcoming legislation regarding competency is accountability. As competency is intrinsically tied to the practice of due diligence, supervisors, service providers and employers are now legally responsible for establishing a framework / methodology to evidence work site competency.

There are resources available to assist in developing safety management systems in the current OHS Act. It states that "every organization must develop appropriate systems of work within their health and safety management system" (Ch.2 Sec.3). Some recommended examples include health and safety audits, codes of practice, job hazard analyses (JHAs), Task observations, Pre-job safety planning etc. It specifically states that "the system each employer adopts for its own use should depend on its industry, the type of operation and the nature and degree of risks to which its workers are exposed" (Ch.2 Sec.3). While this statement prescribes organizations to determine what works best for them, it is imperative to recognize the shift to legal obligation that will be placed upon supervisors, service providers and employers.

One of the limitations of both the current and new OHS Act is the element of criticality. There were discussions at the Alberta Bill 30 Workshop on Mar 23, 2018 about the need for competency to be analyzed through a situational lens. It was suggested that a person's behaviours are predicated upon the circumstance they are in. The task group divided competency into three situational categories: under normal operation, abnormal operation and emergency operation. An individual may be deemed competent from a theoretical or textbook perspective, but may not demonstrate the same level of competency in an emergency situation. Consider that [d]ue diligence is essentially risk-based" (Sec. 3). The existing OHS Act states that "greater care must be taken where there is a high risk of injury" (Sec. 3). To properly vet the worker for competency, risk assessments should be performed based on criticality. To illustrate, a supervisor may deem an employee fit for duty by obtaining an employee's passing grade for written H₂S training and witnesses a successful demonstration of skills. They may not, however, have conducted that same physical test to audit the worker's performance under all conditions. In this case, the employee may panic during an emergency and may not properly don their protective equipment, which could result in worker exposure to potentially lethal H₂S gas. Because this situation is a foreseeable possibility, the supervisor would still be responsible to have exhausted this aspect of competency during the vetting process.

¹⁰ Occupational Health and Safety Act Chapter 0-2, Alberta Queen's Printer, Ch.1(4).

5.0 JOINT WORK SITE HEALTH & SAFETY COMMITTEES

5.1 CURRENT OHS ACT — VALID UNTIL MAY 31, 2018

Under current legislation, Joint Work Site Health and Safety Committees (HSC) are only required under a Ministerial Order for specific work sites, whereby "the Minister may, by order, require that there be established at any work site a joint work site health and safety committee"¹¹. Alberta is the only province that does not have mandatory health and safety committees (HSC) and/or health and safety (H&S) representatives for all work sites in its legislation. This disparity identifies the need to bring Alberta in line with the other provinces. Research shows that HSCs facilitate worker participation and help to promote a strong health and safety culture.

5.2 ALBERTA BILL 30 — EFFECTIVE JUNE 1, 2018

The new Act details new work site requirements for employers or prime contractors to establish Joint Work Site Health and Safety Committees (HSC) and Health and Safety (H&S) Representative(s):

- Employers or prime contractor required to establish a HSC for a work site with 20 or more workers and the work is expected to last 90 days or more
- H&S representative required for work site or project with 5 to 19 workers and the work is expected to last 90 days or more
- Training required for HSC co-chairs and H&S representative
- When HSC members or H&S representatives provide reasonable notice, they are permitted up to two days to attend OHS education or training
- No loss of pay or benefits for HSC members or H&S representatives when carrying out duties or participating in OHS training or education

In instances where there are multiple work sites, employers are required to apply the aforementioned criteria to each work site. Exceptions to these requirements may be considered under the "approvals for variations" under section 16(4) of the OHS Act or under section 17(1).

Duties of HSC and H&S representatives

- Receipt, consideration and disposition of health and safety concerns and complaints
- Participate in hazard identification
- Develop and promote measures to protect the health and safety at the work site and check effectiveness with an OHS officer
- Develop measures to protect the health and safety of persons at the work site and checking effectiveness
- Advise concerns regarding the health and safety of workers
- Inspect the work site at regular intervals
- Participate in investigations of serious injuries and incidents at the work site
- Maintain records of activities and meetings

(H&S representatives, in cooperation with the employer, will perform the same duties as an HSC with necessary modifications)

¹¹ Occupational Health and Safety Act Chapter 0-2, Alberta Queen's Printer, Sec.31(1).

The membership of HSCs must include a minimum of four members, including an employer and worker co-chair and at least half the committee members much represent workers. The names and contact names of the committee members are to be posted by either the employer or prime contractor. The committee is also required to set out rules of procedure for HSCs to fulfill their duties, outlined in Alberta Bill 30 Sec.16(3), including how:

- Concerns and complaints are dealt with
- The committee participates in hazard identification
- Inspections are done and how frequently
- Records are maintained and for how long

An employer with 20 or more workers is required to establish a health and safety program in consultation with HSC and implement the program.

- Program elements include:
 - OHS policy
 - Hazard assessment
 - Emergency response
 - Responsibilities of work site parties
 - Schedule and procedure for inspections
 - Procedures to deal with OHS issues when another employer or self-employed person
 - Works on site
 - Orientation and Training
 - Incident Investigation
 - Procedure for worker participation
 - Review and revise program every 3 years or when conditions change

Smaller workplaces are required to involve workers in hazard assessment and control.

5.3 WHAT THESE CHANGES MEAN FOR EMPLOYERS

Joint Work Site Health and Safety Committees are important forums for workers to participate in occupational health and safety. They ensure supervisors and workers discuss health and safety issues in the workplace and work together to find ways to address them. Employers will need to collaborate with their entire team to establish their requirements for both HSCs/H&S representative(s) while also determining meeting and documentation requirements. Employers' obligation to educate and train their staff regarding the roles, responsibilities, duties and function of the HSC becomes law on June 1, 2018.

As a resource to assist employers with the new requirements for HSCs/H&S representatives, "[t]he Canadian Centre for Occupational Health and Safety has developed a free introductory course to help committee co-chairs and representatives learn about their roles and responsibilities. This course will help employers meet their requirements to ensure committee members and representatives have adequate training. Participants will receive a two hour credit" and a "certificate will be issued upon successful completion" This course is available online at: https://www.ccohs.ca/distributors/alberta.

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¹² Health and Safety eNews - May 2018 www.alberta.ca

If you are unsure whether a HSC or H&S rep is required at your work site, additional information can be found at:

http://work.alberta.ca/documents/WHS-PUB_li003.pdf

https://www.alberta.ca/assets/documents/ohs-joint-worksite-health-safety-committees.pdf

https://www.alberta.ca/assets/documents/ohs-when-i-need-a-committee.pdf

6.0 REPORTING SERIOUS INJURIES & INCIDENTS

6.1 CURRENT OHS ACT — VALID UNTIL MAY 31, 2018

The current Act clearly states the criteria for employers reporting serious injuries and accidents:

"The injuries and accidents to be reported under subsection (1) are

- (a) an injury or accident that results in death,
- (b) an injury or accident that results in a worker's being admitted to a hospital for more than two days,
- (c) an unplanned or uncontrolled explosion, fire or flood that causes a serious injury or that has the potential of causing a serious injury,
- (d) the collapse or upset of a crane, derrick or hoist, or
- (e) the collapse or failure of any component of a building or structure necessary for the structural integrity of the building or structure.
- (f) Significant mining incidents (ground fall, ventilation failure, out of control vehicle, fire, serious electrical failure hoist or shaft failure, dam failure, other emergency)"13

6.2 ALBERTA BILL 30 — EFFECTIVE JUNE 1, 2018

Alberta Bill 30 highlights two significant changes to the OHS Act. The first is the threshold for reporting an injury or incident. The current OHS Act indicates two days hospitalization, whereas new legislation for reporting an injury or incident will be "admission to the hospital regardless of the length of stay"¹⁴.

The second change to the OHS Act is the requirement to report incidents with the potential to cause serious injury ('near misses'), referred to as 'PSI's:

"(5) If an injury or any other incident that has the potential of causing serious injury to a person occurs at a work site, the prime contractor or, if there is no prime contractor, the employer shall

- (a) report the time, place and nature of the incident to a Director of Inspection,
- (b) carry out an investigation into the circumstances surrounding the injury or incident,
- (c) prepare a report outlining the circumstances of the injury or incident and the corrective action, if any, undertaken to prevent a reoccurrence of the injury or incident,
- (d) ensure that a copy of the report is readily available and provided to an officer on demand, and
- (e) provide a copy of the report to a Director of Inspection, the joint work site health and safety committee or health and safety representative, if applicable, or, if there is no committee or representative, make it available to workers once the investigation is complete" (Sec. 5).

¹³ Occupational Health and Safety Act Chapter 0-2, Alberta Queen's Printer, Subsection 1.

¹⁴ Alberta Bill 30: An Act to Protect the Health and Well-being of Working Albertans, Sec.40, 2(b).

Having knowledge of potentially serious injuries (PSIs) assists the government by targeting areas of health and safety concerns to provide resources and/or conduct inspections.

6.3 WHAT THESE CHANGES MEAN FOR EMPLOYERS

Employers will need to expand their current reporting systems to include reporting 'near miss' incidents and all injuries or incidents resulting in admission to the hospital (regardless of duration).

There were discussions during the Alberta Bill 30 Workshop regarding the lack of clarity for 'near miss' incidents in the new legislation. At the time of this writing, there are no specific definitions for what constitutes a potentially serious injury or incident, some believe there may be challenges if the process becomes overloaded with reports of all 'near miss' information, which could undermine the intended effect.

As a preventative measure, and to best prepare for the upcoming changes to legislation, it may be advantageous for organizations to develop an identification process to qualify 'near miss' incidents. This approach would provide consistent and comparable metrics that could be used to analyze the efficacy of an organization's safety management system.

7.0 CONCLUSION

A strong health and safety workplace culture is essential to preventing work-related injuries, illnesses and deaths. On June 1, 2018 Alberta Bill 30: An Act to Protect the Health and Well-being of Working Albertans, becomes our governing mandate. Its purpose is to improve worker safety, modernize workplace standards and to better align Alberta's standards with the rest of Canada.

The Internal Responsibility System becomes the conduit for successfully implementing the mandate of Alberta Bill 30. Everyone in the workplace is accountable for health and safety, according to their authority and control. As such, it becomes the responsibility of each person to acknowledge the significance of these changes and to integrate these requirements into their current safety management system.

The strategy is simple: our best resource to safeguard against work-related injuries, illnesses and fatalities is to integrate best safety practices with the mandate outlined in *Alberta Bill 30*, *An Act to Protect the Health and Well-Being of Working Albertans*.

8.0 RESOURCES

8.1 HIGHLIGHTS OF CHANGES IN ALBERTA BILL 30

What Employers Should Know

- » Employers have a new responsibility to ensure health, safety and welfare of workers and other persons at the work site
- » Employers need to ensure workers are not subjected to or participate in harassment or violence
- » New legislation requires employers to ensure work site parties are not subjected to or participate in harassment or violence
- » The definition for discriminatory action: "any action or threat of action by any person that would adversely affect workers with respect to terms or conditions of employment, or opportunity for promotion"

Prime Contractors

- The prime contractor of the work site needs to be identified in writing and the name / details of the individual is to be posted in a conspicuous place at the work site
- » The prime contractor is required to coordinate the health and safety programs of employers and self-employed persons on the work site

Supervisors

» Employers will need to identify individuals operating in a supervisory capacity as a result of newly legislated responsibilities

Workers

» Workers have a right to refuse dangerous work and are protected from reprisals for exercising this right under new legislation

Contractors

» Legislation now states that contractors are responsible to ensure the work site and processes under their control do not endanger the health and safety of others

Owners

» Owners are defined as: owners of the land or the premises of the work site, but does not include a private residence unless a business is located there

Self Employed Persons

» Self Employed Persons have a responsibility to conduct their work in a way that protects them and others from health and safety hazards

Temporary Staffing Agencies

» Temporary Staffing Agencies must ensure workers assigned to another employer are suitable for the work

Service Providers

» Service providers will need to ensure that their service does not create a hazard to others on the work site and must be compliant with legislation

Suppliers

» Suppliers must ensure products and equipment comply with legislation

Competency

» Alberta Bill 30 will introduce competency obligations for supervisors, service providers, and employers

Joint Work Site Health and Safety Committees

- » Employers and prime contractors are required to establish Joint Work Site Health and Safety Committees (HSC) for work sites with 20 or more workers for a work site lasting 90 days or more
- » A Health and Safety representative is required for work site or project with 5 to 19 workers
- » An employer with 20 or more workers is required to establish a health and safety program in consultation with HSC, which includes the implementation of the program
- » Training will be required for the HSC co-chairs and H&S representative(s) with no loss of pay or benefits for those carrying out OHS duties or OHS training

Violence and Harassment

- » OHS has revised their existing definition of "violence" to include domestic or sexual violence
- » Workers are to refrain from causing or participating in harassment or violence

Reporting Serious Injuries & Incidents

- » The threshold for reporting an injury or incident changes to 'admission to hospital', regardless of duration
- There is a new requirement to report incidents with the potential to cause serious injury (near misses), often referred to as 'PSI's

OHS Compliance

» The Director may issue acceptance for an alternative approach to achieving compliance with the OHS requirements if the Director is satisfied the alternative provides equal or greater protection

8.2 REFERENCES

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Worker participation in health & safety OHS information for workers, employers, and prime contractors, without health and safety committees or representatives (LI04)