Public Services Health & Safety Association™

Your Health. Your Safety. Our Commitment.

# Guide to OHSA, Guide to JHSC & Guide to WHMIS

## Ministry of Labour Resource Materials

**Guide to OHSA, Guide to JHSC & Guide to WHMIS**


Product Code: PBAMNAEN0316

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# Ministry of Labour (MOL) Guidebooks



The MOL has three guidebooks that should be consulted during the certification training process. These materials have been provided to you for your reference during the training.

**This consolidated resource manual is comprised of the three MOL guidebooks in which you are required to reference. The link to the source file for each is also provided.**

## Guide to Occupational Health and Safety Act (OHSA)

http://www.labour.gov.on.ca/english/hs/pubs/ohsa/index.php

## Guide to Joint Health and Safety Committee (JHSC)

http://www.labour.gov.on.ca/english/hs/pubs/jhsc/index.php

## Guide to Workplace Hazardous Material Information System (WHMIS)

http://www.labour.gov.on.ca/english/hs/pubs/whmis/index.php

You may refer to this consolidated resource guide in the future or you can reference the individual MOL guidebooks online.

Ontario

# Guide to the Occupational Health and Safety Act

The *Occupational Health and Safety Act* sets out the rights and duties of all parties in the workplace, as well as the procedures for dealing with workplace hazards and for enforcement as needed.

## Foreword

This guide does not constitute legal advice. To determine your rights and obligations under the *Occupational Health and Safety Act* (OHSA) and its regulations, please contact your legal counsel or refer to the legislation.

For further information on the OHSA and its requirements you may wish to refer to the relevant health and safety association:

- Health & Safety Ontario
- Workers Health & Safety Centre

## Introduction

We all share the goal of making Ontario's workplaces safe and healthy.

The *Occupational Health and Safety Act* [1] provides us with the legal framework and the tools to achieve this goal. It sets out the rights and duties of all parties in the workplace. It establishes procedures for dealing with workplace hazards and it provides for enforcement of the law where compliance has not been achieved voluntarily by workplace parties.

The Act came into force in 1979. Changes to the Act in 1990 and subsequent years continued the evolution of occupational health and safety legislation since its original enactment. These changes have strengthened the requirements for occupational health and safety in Ontario workplaces and have reinforced the internal responsibility system (IRS) and the workplace structures, in particular the joint health and safety committees.

Employers should note that the Act makes it clear that the employers have the greatest responsibilities with respect to health and safety in the workplace. However all workplace parties have a role to play to ensure that health and safety requirements are met in the workplace. All workplace parties have a responsibility for promoting health and safety in the workplace and a role to play to help the workplace be in compliance with the statutory requirements set out under the Act. The respective roles and responsibilities for all workplace parties are detailed in the Act. This is the basis for the internal responsibility system.

Every improvement in occupational health and safety benefits all of us. Through cooperation and commitment, we can make Ontario a safer and healthier place in which to work.

It's worth working for.

## About this guide

This **guide does not replace** the *Occupational Health and Safety Act* **(OHSA) and its regulations, and should not be used as or considered legal advice**. Health and safety inspectors apply the law based on the facts in the workplace.

This guide can assist you in understanding how to have a healthy and safe workplace. It explains what every worker, supervisor, employer, constructor and workplace owner needs to know about the *Occupational Health and Safety Act*. It describes workplace parties' rights and responsibilities in the workplace and answers, in plain language, the questions that are most commonly asked about the Act.

This guide is intended to provide an overview of the Act. It is not a legal document. The guide does not cover every situation or answer every question about the legal requirements concerning occupational health and safety in Ontario. In order to understand your legal rights and duties, you must read the Act and the regulations. But if you read this guide beforehand, you may find the technical language of the legislation easier to understand. Throughout the guide, the relevant section numbers of the *Occupational Health and Safety Act* have been inserted in the text for ease of reference.

The Ministry of Labour, Training and Skills Development issues guidance documents to assist with the application and interpretation of sections of the Act that relate to occupational health and safety. Guidance documents are intended to assist workplace parties with compliance, but, are not intended to provide interpretations of the law. This guidance document is designed to provide all workplace parties with guidance on the requirements of the OHSA.

Current versions of Ontario law can be viewed at or downloaded and printed from e-Laws.

If you need help in answering questions about the Act or the regulations, you have a number of options. You may:

- Visit the Ministry of Labour, Training and Skills Development's website
- Call the Ministry's toll-free health and safety information line at 1-877-202-0008 between 8:30 a.m. and 5:00 p.m. Monday-Friday for general inquiries about workplace health and safety
- Seek legal advice.

# The Internal Responsibility System

One of the primary purposes of the *Occupational Health and Safety Act* (OHSA) is to facilitate a strong internal responsibility system (IRS) in the workplace. To this end, the OHSA lays out the duties of employers, supervisors, workers, constructors and workplace owners.

**Workplace parties' compliance with their respective statutory duties is essential to the establishment of a strong IRS in the workplace.**

Simply put, the IRS means that everyone in the workplace has a role to play in keeping workplaces safe and healthy. Workers in the workplace who see a health and safety problem such as a hazard or contravention of the OHSA in the workplace have a statutory duty to report the situation to the employer or a supervisor. Employers and supervisors are, in turn, required to address those situations and acquaint workers with any hazard in the work that they do.

The IRS helps support a safe and healthy workplace. In addition to the workplace parties' compliance with their legal duties, the IRS is further supported by well-defined health and safety policies and programs, including the design, control, monitoring and supervision of the work being performed.

# Roles and responsibilities

## The employer

The employer, typically represented by senior management, has the greatest responsibilities with respect to health and safety in the workplace and is responsible for taking every precaution reasonable in the circumstances

for the protection of a worker. The employer is responsible for ensuring that the IRS is established, promoted, and that it functions successfully. A strong IRS is an important element of a strong health and safety culture in a workplace. A strong health and safety culture shows respect for the people in the workplace.

### Supervisors

Supervisors are responsible for making workers fully aware of the hazards that may be encountered on the job or in the workplace; ensuring that they work safely, responding to any of the hazards brought to their attention, including taking every precaution reasonable in the circumstances for the protection of a worker.

### Workers

Worker responsibilities include: reporting hazards in the workplace; working safely and following safe work practices; using the required personal protective equipment for the job at hand; participating in health and safety programs established for the workplace.

### Health and safety representatives/joint health and safety committees

The health and safety representative, or the joint health and safety committee (JHSC) where applicable, contribute to workplace health and safety because of their involvement with health and safety issues, and by assessing the effectiveness of the IRS. More information on the roles of the joint health and safety committee and the health and safety representative can be found in this guide and the *Guide for joint health and safety committees and health and safety representatives in the workplace*.

### External parties

Parties and organizations external to the workplace also contribute to workplace health and safety. These include the Ministry of Labour, Training and Skills Development (MLTSD), the Workplace Safety and Insurance Board (WSIB), and the health and safety system partners. The MLTSD's primary role is to set, communicate, and enforce workplace occupational health and safety standards while encouraging greater workplace self-reliance.

As of April 2012, in addition to the enforcement responsibilities noted above, the ministry is also responsible for developing, coordinating and implementing strategies to prevent workplace injuries and illnesses and set standards for health and safety training. Some of the ways that it carries out its prevention mandate include establishing a provincial occupational health and safety strategy, promoting the alignment of prevention activities across all workplace health and safety system partners and working with Ontario's health and safety associations (HSAs) to ensure effective delivery of prevention programs and services.

## The three rights of workers

The OHSA gives workers three important rights:

1. The right to know about hazards in their work and get information, supervision and instruction to protect their health and safety on the job.
2. The right to participate in identifying and solving workplace health and safety problems either through a health and safety representative or a worker member of a joint health and safety committee.
3. The right to refuse work that they believe is dangerous to their health and safety or that of any other worker in the workplace.

### The right to know

Workers have the right to know about any potential hazards to which they may be exposed in the workplace. The primary way that workers can become aware of hazards in the workplace is to be informed and instructed on how to protect their health and safety, including health and safety related to the use of machinery, equipment, working conditions, processes and hazardous substances.

The employer can enable the workers' right to know in various ways, such as making sure they get:

- Information about the hazards in the work they are doing
- Training to do the work in a healthy and safe way
- Competent supervision to stay healthy and safe.

### The right to participate

Workers have the right to be part of the process of identifying and resolving workplace health and safety concerns. This right is expressed through direct worker participation in health and safety in the workplace and/or through worker membership on joint health and safety committees or through worker health and safety representatives.

### The right to refuse

Workers have the right to refuse work that they believe is dangerous to either their own health and safety or that of another worker in the workplace. For example, workers may refuse work if they believe their health and safety is endangered by any equipment they are to use or by the physical conditions of the workplace. Section 43 of the Act describes the exact process for refusing work and the responsibilities of the employer/supervisor in responding to such a refusal.

In certain circumstances, members of a joint health and safety committee who are "certified" have the right to stop work that is dangerous to any worker. Sections 45 – 47 of the Act sets out these circumstances and how the right to stop work can be exercised.

## About the Act

The *Occupational Health and Safety Act* (OHSA) contains definitions in addition to the content under the following headings:

- Part I Application
- Part II Administration
- Part II.1 Prevention Council, Chief Prevention Officer and Designated Entities
- Part III Duties of Employers and Other Persons
- Part III.0.1 Violence and Harassment
- Part III.1 Codes of Practice
- Part IV Toxic Substances
- Part V Right to Refuse or to Stop Work Where Health or Safety in Danger
- Part VI Reprisals by Employer Prohibited
- Part VII Notices
- Part VIII Enforcement
- Part IX Offences and Penalties
- Part X Regulations

## Terms Used

These are some of the terms more commonly used in the Act.

Workplace

Any place in, on or near to where a worker works. A workplace could be a building, a mine, a construction site, an open field, a road, a forest, a vehicle or even a beach. In determining whether a place is a workplace, the Ministry of Labour, Training and Skills Development (MLTSD) will consider questions such as: Is the worker being directed to work there?

Worker

Worker means any of the following, but does not include an inmate of a correctional institution or like institution or facility who participates inside the institution or facility in a work project or rehabilitation program:

1. A person who performs work or supplies services for monetary compensation.
2. A secondary school student who performs work or supplies services for no monetary compensation under a work experience program authorized by the school board that operates the school in which the student is enrolled.
3. A person who performs work or supplies services for no monetary compensation under a program approved by a college of applied arts and technology, university or other post-secondary institution.
4. Such other persons as may be prescribed who perform work or supply services to an employer for no monetary compensation.

Employer

A person who employs or contracts for the services of one or more workers. The term includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor, sub-contractor to perform work or supply services.

Constructor

A person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than one employer.

While the identification of a constructor is a fact-specific determination, the constructor is generally the person (such as the general contractor) who has overall control of a project. See also the publication entitled: Constructor Guideline: Health and Safety.

Prescribed

Prescribed means specified in regulations made under the Act.

Supervisor

A person, appointed by an employer, who has charge of a workplace or authority over a worker.

Owner

An owner includes a tenant, lessee, trustee, receiver, mortgagee in possession or occupier of the lands or premises. It also includes any person who acts as an agent for the owner.

Licensee

A person who holds a logging licence under the *Crown Forest Sustainability Act, 1994*.

Regularly Employed

This term is not defined in the OHSA. However, by policy, MLTSD has interpreted the term to mean employed for a period that exceeds three months.

Workplace Harassment

Workplace harassment is defined in the OHSA as engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.

Workplace Violence

Workplace violence is defined in the OHSA as the exercise or attempted exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker, or a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

# Part I: Application

Almost every worker, supervisor, employer and workplace in Ontario is covered by the *Occupational Health and Safety Act* (OHSA) and regulations. Regulated parties also include owners, constructors, and suppliers of equipment or materials to workplaces.

# Work and workplaces not covered

The *Occupational Health and Safety Act* (OHSA or "the Act") does not apply to:

- work done by the owner or occupant, or a servant of the owner or occupant, in a private residence or in the lands and appurtenances used in connection with the private residence [subsection 3(1)], and
- workplaces under federal jurisdiction, such as:
  - post offices
  - airlines and airports
  - banks
  - some grain elevators
  - telecommunication companies
  - interprovincial trucking, shipping, railway and bus companies.

The law that covers federal workplaces is available online on the Federal Government website. Health and safety provisions are found under Part II of the *Canada Labour Code*.

## Does the Act apply to farms?

The OHSA applies with some limitations and exceptions, to all farming operations.

It does not apply to farms operated by a self-employed person without any workers, such as a family farm run by a couple with no other workers.

An electronic version of the regulation is available on the Ontario government website for *O. Reg.414/05: Farming Operations*.

Other regulations under the OHSA that apply to farming operations where the Act applies include *Reg. 834: Critical Injury, Defined*; *O. Reg. 297/13: Occupational Health and Safety Awareness Training*; and *O. Reg. 381/15: Noise*. More information on the application of the OHSA to farming operations is available on the Ontario government website in the MOL guide, Health and Safety in Farming Operations.

### Does the Act apply to teachers?

The OHSA applies, with some prescribed limitations and conditions found in *O. Reg. 857: Teachers*. The regulation includes the following:

- the Act applies to all persons who are employed as teachers as defined in the *Education Act*
- the following conditions and limitations apply to the application of the OHSA to teachers:
    - a Principal and Vice-Principal or a teacher appointed by the employer to direct and supervise a school, or an organizational unit of a school, is a person who has charge of a school or authority over a teacher and exercises managerial functions — as such the Act's supervisor duties apply;
    - if an employer of teachers establishes and maintains one joint health and safety committee (JHSC) for all of its teachers, that employer is deemed to be in compliance with subsection 9 (2) of the Act for its teachers (an employer may establish more than one teacher JHSC);
    - the right to refuse work (Part V – OHSA) does not apply to teachers if circumstances are such that the life, health or safety of a pupil is in imminent jeopardy.

For further information on work refusals in the education sector, refer to Part V — Work Refusals, of this guide. For the official legal requirements, refer to the Ontario government website for *Reg. 857: Teachers*. In addition, the following is a link to the *Education Act* for reference.

### Does the Act apply to the self-employed person?

Specific provisions in the OHSA, such as those relating to specific employer duties, hazardous materials, notification, and enforcement, apply with necessary modifications to self-employed persons.

### If you still are not sure if the Act applies to you or your workplace

If there is any question about whether the OHSA applies to you or your workplace, you may consider calling the Ministry of Labour, Training and Skills Development's health and safety information line:

Health & Safety Contact Centre
Toll Free: 1-877-202-0008
TTY: 1-855-653-9260
Fax: 905-577-1316

General inquiries about workplace health and safety are taken from 8:30 a.m. – 5:00 p.m., Monday – Friday.

Content last reviewed May 2019.

# Part II: Administration

Part II relates to the administration of the *Occupational Health and Safety Act* (OHSA) and covers the requirements setting out the creation, selection, powers, rights and obligations of the joint health and safety committee and health and safety representatives.

# Joint health and safety committees

A joint health and safety committee (JHSC) is a workplace committee comprised of worker and management representatives. At least half of the members of the JHSC must be workers (selected by workers or by the trade union(s) that represent the workers) employed at the workplace and that do not exercise managerial duties. This committee has various powers, including monitoring health and safety in the workplace, identifying hazards in the workplace, and recommending health and safety improvements where and when required.

The committee is authorized to hold meetings and conduct regular workplace inspections and make written recommendations to the employer for the improvement of the health and safety of workers.

Part II outlines the requirements of the Act regarding committees. More detailed information is available in the *Guide for Health and Safety Committees and Representatives*, available on the Ministry of Labour, Training and Skills Development (MLTSD) internet website.

## The function and power of the JHSC

The JHSC has several important functions and powers which enable the committee to support the IRS and ensure it is functioning effectively.

### Identify workplace hazards

One of the main purposes of the JHSC is to identify workplace hazards, such as machinery, substances, production processes, working conditions, procedures or anything else that can endanger the health and safety of workers [clause 9(18)(a)]. To a large extent, this purpose is met by carrying out inspections of the workplace. It may obtain and review specified types of information (e.g. information identifying potential or existing hazards) from the employer so that corrective action can be recommended.

Unless otherwise required by Regulation or an inspector's order, the Act requires that a designated member of the committee, who represents workers, inspect the workplace at least once a month. In some cases, this may not be practical. For example, the workplace may be too large and complex to be inspected fully each month. Where it is impractical to conduct monthly inspections, the committee must establish an inspection schedule that will ensure that at least part of the workplace is inspected each month and the entire workplace is inspected at least once a year [subsections 9(26), (27) and (28)].

### Obtain information from the employer

For most committees, the employer is likely to be an important source of information. The committee has the power to obtain information from the employer, such as information about any actual or potential hazards in the workplace, about the health and safety experience and work practices and standards in other workplaces of which the employer is aware and about any workplace testing that is being carried out for occupational health and safety purposes.

### Be consulted about workplace testing

If the employer intends to do specified testing in or about the workplace that is related to occupational health and safety, the joint health and safety committee has the right to be consulted before the testing takes place. A designated member of the JHSC representing workers may also be present at the beginning of such testing if the committee believes that his or her presence is necessary to ensure that valid testing procedures are used or to ensure that test results are valid [clause 9(18)(f)].

### Make recommendations to the employer

The committee has the power to make recommendations to the employer and to the workers on ways to improve workplace health and safety. For example, the committee could recommend that a new type of hearing protection be given to workers in noisy areas, or that safety training programs be established, or that special testing of the work environment be carried out [clauses 9(18)(b) and (c)].

If the committee has failed to reach a consensus about making recommendations after trying to reach a consensus in good faith to do so, either co-chair of the committee has the power to make written recommendations to the constructor or the employer.

The employer must provide a written response within 21 calendar days, to any **written recommendations** from the committee or co-chair. If the employer agrees with the recommendations, the response must include a timetable for implementation. For example, if the employer agrees that a special training program should be established, the response must say when the program will begin to be developed and when it will be delivered. If the employer disagrees with a recommendation, the response must give the reasons for disagreement [subsections 9(20) and (21)].

**Investigate work refusals**

The committee members who represent workers must designate one of their group to be present at the investigation of a work refusal. For more information, see Part V: The right to refuse or to stop work where health and safety in danger.

**Investigate critical injuries or fatalities**

The members of a committee who represent workers must designate one or more worker members to investigate cases in which a worker is killed or critically injured at a workplace. The designated member(s) may (subject to subsection 51(2) of the Act) inspect the place where the accident occurred and any machine, device, etc. and report his or her findings to a Director and the committee [subsection 9(31)].

**Obtain information from the Workplace Safety and Insurance Board**

In workplaces which are subject to the *Workplace Safety and Insurance Act, 1997* (WSIA), at the request of the employer, a worker, committee, health and safety representative or trade union, the Workplace Safety and Insurance Board (WSIB) must provide the employer with an annual summary of information about the employer [subsection 12(1)]. This information must include:

- number of work-related fatalities
- number of lost time injuries
- number of workdays lost
- number of injuries requiring medical aid but that did not involve lost workdays
- incidence of occupational illnesses, and
- number of occupational injuries.

The WSIB can include any other information it considers necessary.

When this report is received from the WSIB, an employer must post it in a conspicuous place(s) in the workplace, where it is likely to be seen by the workers.

## Employer's duty to co-operate with the committee

Under the Act, an employer has a general duty to co operate with and help the joint health and safety committee to carry out its functions [clause 25(2)(e)]. In particular, the employer is required to:

- provide any information that the committee has the power to obtain from the employer
- respond to committee recommendations in writing, as described earlier (subsection 9(20))
- give the committee copies of all written orders and reports issued by the Ministry of Labour, Training and Skills Development inspector and (subsection 57(10), and
- report any workplace deaths, injuries and illnesses to the committee (subsection 52(1)).

In addition to the above noted duties, the employer must provide notices to the committee related to death and injury, accident, explosion, fire or violence causing injury, occupational illness, and accidents at a project site or mine (see Part VII: Notices).

The employer must also advise the committee of the results of an assessment of risks of workplace violence [section 32.0.3] and provide the results of any report on occupational health and safety that is in the employer's possession [clause 25(2)(l)]. Where the report is in writing, the employer must provide the committee with the portions of the report that relate to occupational health and safety.

### Certified members of committees

A "certified" member of a joint health and safety committee is a member who has received specialized training in occupational health and safety and has been certified by the Chief Prevention Officer under the OHSA as of April 1, 2012.

Prior to April 1, 2012 JHSC members were certified by the WSIB under the WSIA. Those certifications are still recognized under the OHSA.

The certified member plays an important role on the committee and in the workplace and possesses specific powers under the OHSA.

In general, constructors and employers are required to ensure that joint health and safety committees in their workplaces have at least two certified members (one representing workers and one representing the employer/constructor). Subsection 9(13) and *O. Reg. 385/96, Joint Health and Safety Committees Exemption from Requirements*, specify exceptions to this general certification requirement.

More detailed information is available in the *Guide for Health and Safety Committees and Representatives*.

## Worker trades committees on construction projects

In addition to the above rules about JHSCs, there are special rules for the establishment and operation of worker trades committees on construction projects of specified size and duration.

- All members of the worker trades committee are chosen by the workers in the trade represented by the committee, or by their union where applicable [subsection 10(3)].
- Worker trades committees are required on projects that regularly employ 50 or more workers and are expected to last at least three months [subsection 10(1)].

It is the responsibility of the JHSC at the construction project, not of the employer or constructor, to establish the worker trades committee. The OHSA requires that the worker trades committee represent workers employed in each of the trades in the workplace and that the members of this committee are to be selected by the workers, who are employed in the trades that the members are to represent, or by the representative trade union (where applicable).

### What are the functions of the worker trades committee?

The worker trades committee has the sole function of informing the JHSC of any health and safety concerns of workers who are employed in the trades in the workplace.

## Health and safety representatives

Not all workplaces are required to have a joint health and safety committee. In most small workplaces, a health and safety representative of the workers is required instead of a committee. This section outlines the provisions of the Act that cover health and safety representatives.

A health and safety representative is required at a workplace or construction project where the number of workers in the workplace regularly exceeds five, and where there is no joint health and safety committee

required [subsection 8(1)]. The health and safety representative must be chosen by the workers who do not exercise managerial functions and who will be represented by the representative, or by the union if there is one [subsection 8(5)].

MLTSD is of the view that the workers do not need to all be physically present in the workplace at the same time for the purposes of determining if the number of workers in the workplace regularly exceeds the statutory threshold.

Health and safety representatives have many of the same powers as joint health and safety committee members, except for the power to stop work. If you are a health and safety representative, please read the previous section on joint health and safety committees, and also refer to the *Guide for Health and Safety Committees and Representatives*.

## The function and powers of the health and safety representative

A health and safety representative has the following powers:

### Identify workplace hazards

The health and safety representative has the power to identify workplace hazards and make recommendations or report his or her findings to the employer, workers and relevant trade union(s) (if any). This power is usually exercised by conducting workplace inspections.

Unless otherwise required by the regulations or by an inspector's order, the representative must inspect the physical condition of the workplace at least once a month [subsection 8(6)]. If it is not practical, for some reason, to inspect the entire workplace once a month, at least part of it must be inspected monthly, following a schedule agreed upon by the representative and the employer/constructor. The entire workplace must be inspected at least once a year [subsections 8(7) and (8)].

The constructor, employer and workers are required to give the representative any information and assistance needed to carry out these inspections [subsection 8(9)].

### Obtain information from the employer

Under the Act an employer has a general duty to co operate with and help the health and safety representative to carry out his or her functions [clause 25(2)(e)]. The health and safety representative has the power to obtain information from the constructor or employer concerning tests, if any, on equipment, machine, agents, etc. in the workplace. This power is reinforced by the employer's duty to assist and cooperate with the health and safety representative in the carrying out of his/her functions, to advise the health and safety representative of the results of an assessment of risks of workplace violence and provide a copy of the assessment if it is in writing [section 32.0.3], and to provide the health and safety representative with the results of a report on occupational health and safety [clause 25(2)(l)].

### Be consulted about workplace testing

If the employer intends to do specified testing in or about the workplace that is related to occupational health and safety, the representative has the right to be consulted before the testing takes place. He or she may also be present at the beginning of such testing if the representative believes that his or her presence is necessary to ensure that valid testing procedures are used or to ensure that test results are valid [clause 8(11)(b)].

### Make recommendations to the employer

The representative has the power to make recommendations to the employer on ways to improve workplace health and safety – the same power given to joint health and safety committees.

The constructor or employer must respond in writing, within 21 calendar days, to any written recommendations [subsection 8(12)].

**Investigate work refusals**

The health and safety representative must be present at the employer's investigation of a work refusal unless another worker, who has been selected by a trade union or the workers in the workplace to represent them in work refusal investigations, is present. For more information, see Part V: Right to refuse or to stop work where health and safety in danger in this Guide.

**Investigate serious injuries**

If a worker is killed or critically injured on the job, the representative has the power to inspect the scene where the injury occurred and any machine, device, thing, etc. subject to subsection 51(2) of the OHSA. His or her findings must be reported in writing to a Director of the Ministry of Labour, Training and Skills Development [subsection 8(14)].

**Request information from the Workplace Safety and Insurance Board (WSIB)**

In workplaces to which the WSIA applies, the health and safety representative has the power to request specified types of information from the WSIB (e.g. number of employer's work-related fatalities, number of employer's lost workdays). This same power is available to a joint health and safety committee member. When this information is received from the WSIB, an employer must post it in the workplace, in a conspicuous location(s) where it is likely to be seen by the workers [subsection 12(1)].

More detailed information is available in the *Guide for Health and Safety Committees and Representatives*.

## Employer's duty to cooperate with the health and safety representative

Under the Act, an employer has a general duty to co operate with and help the health and safety representative to carry out functions [clause 25(2)(e)]. In particular, the employer is required to:

- provide any information that the health and safety representative has the power to obtain from the employer
- respond to health and safety representative recommendations in writing, as described earlier [subsection 8(12)]
- give the health and safety representative copies of all written orders and reports issued by the Ministry of Labour, Training and Skills Development inspector, and (subsection 57(10), and
- report any workplace deaths, injuries and illnesses to the health and safety representative [subsection 52(1)].

In addition to the above noted duties, the employer must provide notices related to death and injury, accident, explosion, fire or violence causing injury, occupational illness, and accidents at a project site or mine (see Part VII – Notices).

The employer must also advise the health and safety representative of the results of an assessment of risks of workplace violence [section 32.0.3] and provide the results of any report on occupational health and safety that is in the employer's possession [clause 25(2)(l)]. Where the report is in writing, the employer must provide the health and safety representative with the portions of the report that relate to occupational health and safety.

# Part II.I: Prevention Council, Chief Prevention Officer and designated entities

Part II.I of the Act sets out the prevention mandate of the Minister, the structure and powers of the Prevention Council, the powers and duties of the Chief Prevention Officer (CPO), and sets out the process for an entity to become designated. In the occupational health and safety system, these designated entities are more commonly referred to as health and safety associations (HSAs).

It should be noted that the *Occupational Health and Safety Act* (OHSA) does not "establish" the entities. They are established and incorporated outside the purview of the legislation but become designated through the process that is set out in the OHSA and is thereby subject to the standards and other requirements specified therein.

The Prevention Council is made up of an equal number of representatives of employers and labour organizations. In addition, representatives of non-unionized workers, the Workplace Safety and Insurance Board and persons with occupational health and safety expertise must be represented but cannot collectively make up more than one third of the total membership. The Prevention Council is an advisory agency, which provides advice to the Minister and CPO on specified issues.

The role of the CPO includes the following:

a. develop a provincial occupational health and safety strategy
b. prepare an annual report on occupational health and safety
c. exercise any power or duty delegated to him or her by the Minister under the OHSA
d. provide advice to the Minister on the prevention of workplace injuries and occupational diseases
e. provide advice to the Minister on any proposed changes to the funding and delivery of services for the prevention of workplace injuries and occupational diseases
f. provide advice to the Minister on the establishment of standards for designated entities under section 22.5 of OHSA
g. exercise the powers and perform the duties with respect to training that are set out in sections 7.1 to 7.5 of OHSA
h. establish requirements for the certification of persons for the purposes of the OHSA and certify persons under section 7.6 of OHSA who meet those requirements
i. exercise the powers and perform the duties set out in section 22.7 of OHSA, and
j. exercise such other powers and perform such other duties as may be assigned to the Chief Prevention Officer under the OHSA [subsection 22.3 (1)].

# Part III: Duties of employers and other persons

The *Occupational Health and Safety Act* (OHSA or "the Act") includes legal duties for employers, constructors, supervisors, owners, suppliers, licensees, officers of a corporation and workers, among others. Part III of the OHSA specifies the general duties of these workplace parties.

# General duties of employers

An employer who is covered by the OHSA, has a range of legal duties, including the duty to ensure that equipment, materials, and protective devices as prescribed, are provided, are maintained in good condition, that prescribed measures and procedures are carried out in the workplace [subsection 25(1)], and the obligation to:

- instruct, inform and supervise workers to protect their health and safety [clause 25(2)(a)]
- assist in a medical emergency by providing any information, including confidential business information, to a qualified medical practitioner and other prescribed persons for the purpose of diagnosis or treatment

[clause 25(2)(b)]
- appoint competent persons as supervisors [clause 25(2)(c)]. "Competent person" is a defined term under the OHSA as a person who:
  - is qualified because of knowledge, training and experience to organize the work and its performance,
  - is familiar with the Act and the regulations that apply to the work, and
  - has knowledge of any potential or actual danger to health or safety in the workplace
- inform a worker, or a person in authority over a worker, about any hazard in the work and train that worker in the handling, storage, use, disposal and transport of any equipment, substances, tools, material, etc. [clause 25(2)(d)]
- help joint health and safety committees (JHSCs) and health and safety representatives to carry out their functions [clause 25(2)(e)]
- not employ or permit persons under the prescribed age for the employer's workplace, to be in or near the workplace [clauses 25(2)(f) and (g)]
- take every precaution reasonable in the circumstances for the protection of a worker [clause 25(2)(h)]
- post a copy of the OHSA in the workplace, as well as explanatory material prepared by the Ministry of Labour, Training and Skills Development that outlines the rights, responsibilities and duties of workers in both English and in the majority language in the workplace [clause 25(2)(i)]
- in workplaces in which **more than five workers** are regularly employed, prepare a written occupational health and safety policy, review that policy at least once a year and set up and maintain a program to implement it [clause 25(2)(j)]. See Appendix A of this guide for guidance on how to do this
- post a copy of the occupational health and safety policy in the workplace, where workers will be most likely to see it [clause 25 (2)(k)]
- provide the JHSC or the health and safety representative with the results of any occupational health and safety report that the employer has. If the report is in writing, the employer must also provide a copy of the parts of the report that relate to occupational health and safety [clause 25(2)(l)]
- advise workers of the results of such a report. If the report is in writing, the employer must, on request, make available to workers copies of those portions that concern occupational health and safety [clause 25(2)(m)]
- notify a Director of the MLTSD if a JHSC (or a health and safety representative) has identified potential structural inadequacies of a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, as a source of danger or hazard to workers [clause 25(2)(n)] (Note: this clause does not apply to an employer that owns the workplace [section 25(5)]

Also note that a related duty under section 25(1) of the OHSA requires employers to ensure that every part of the physical structure of the workplace, whether it is temporary or permanent, complies with load requirements prescribed in the applicable Building Code provisions, any prescribed standards or sound engineering practice where Building Code provisions or prescribed standards do not apply [clause 25(1)(e)].

Employers may appoint themselves as supervisors if they meet all three qualifications of a competent person. [subsection 25(3)].

# Prescribed duties of employers

Please note that some employer duties make reference to prescribed requirements. For example, clause 25(1)( c) of the OHSA requires that employers carry out any measures and procedures that are prescribed for the workplace. "Prescribed" means specified in regulation. Where a regulation specifies measures and procedures for a specific type of workplace (e.g. an industrial establishment), the employer is required to carry out those measures and procedures.

# Basic occupational health and safety awareness training for workers and supervisors

In addition to requirements for workplace-specific and hazard-specific training, employers are also required to ensure that their workers and supervisors complete, or have completed an occupational health and safety awareness training program that meets regulatory requirements in O. Reg.297/13, Health and Safety Awareness and Training.

The mandatory occupational health and safety awareness training requirement applies to all workplaces covered under the OHSA, such as construction projects, retail stores, hospitals and long-term care facilities, mines and mining plans, and farming operations. Note that awareness training does not replace other training and educational requirements under the OHSA.

A complete list of OHSA regulations can be viewed on the Ministry of Labour, Training and Skills Development's website.

# Duties of employers with respect to footwear

Employers cannot require a worker to wear footwear with an elevated heel unless it is required for the worker to perform his or her work safely [subsection 25.1 (1)]. This does not apply to an employer of a worker who works as a performer in the entertainment and advertising industry [subsection 25.1 (2)]. For example, a restaurant manager cannot require hostesses to wear high heels as part of a dress code, whereby an actor may have to wear heels for a performance or part of a performance.

The OHSA defines "entertainment and advertising industry" [subsection 25.1 (3)] to mean the industry of producing live or broadcast performances, or producing visual, audio or audio-visual recordings of performances, in any medium or format.

"Performances" means performances of any kind, including theatre, dance, ice skating, comedy, musical productions, variety, circus, concerts, opera, modelling and voice-over. "Performer" has a corresponding meaning [(subsection 25.1(3)].

Note that section 25.1 does not affect any of the personal protective equipment requirements regarding footwear in the regulations made under the OHSA. Employers should consult the footwear provisions in the regulations made under the OHSA regarding requirements that apply to their workplace.

# Duties of employers with respect to workplace violence and workplace harassment

Employers have specific duties regarding workplace violence and workplace harassment. Please see Part III.0.I of this guide for more information.

# Duties of employers concerning toxic substances

In workplaces where there are toxic or hazardous substances, the employer has many specific duties. These are described in detail in Part IV — Toxic substances.

# Duties of supervisors

The *Occupational Health and Safety Act* (OHSA) sets out certain specific duties for workplace supervisors. A supervisor must:

- ensure that a worker works in the manner and with the protective devices, measures and procedures required by the OHSA and the regulations [clause 27(1)(a)]

- ensure that any equipment, protective device or clothing required by the employer is used or worn by the worker [clause 27(1)(b)]
- advise a worker of any potential or actual health or safety dangers known by the supervisor [clause 27(2)(a)]
- if prescribed, provide a worker with written instructions about the measures and procedures to be taken for the worker's protection [clause 27(2)(b)], and
- take every precaution reasonable in the circumstances for the protection of workers [clause 27(2)(c)].

### Who is a supervisor?

A supervisor is a person appointed by the employer who has charge of a workplace or authority over a worker [subsection 1 (1)].

Workers are often asked to act as supervisors in the absence of persons hired in that capacity, particularly those identified by such terms as senior, charge, or lead hands. Despite the term used, it is very important to understand that if a worker or lead hand has been given "charge of a workplace or authority over a worker" this person has met the definition of a supervisor within the meaning of the OHSA and assumes the legal responsibilities of a supervisor under the Act.

### Who is a competent person?

A competent person is defined in the OHSA as someone who is qualified because of knowledge, training and experience to organize the work and its performance, is familiar with this Act and the regulations that apply to the work, and has knowledge of any potential or actual danger to health or safety in the workplace.

The OHSA requires that employers appoint a competent person as a supervisor [clause 25(2)(c)].

## Duties of constructors

### Who is a constructor?

A constructor is defined in the OHSA as a person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than one employer. The constructor is generally the person who has overall control of a project.

For more information, see the MLTSD publication on this website, entitled: Constructor Guideline: Health and Safety.

Under the OHSA, the constructor's duties include the following:

- to ensure that the measures and procedures prescribed by this Act and the regulations are carried out on the project [clause 23(1)(a)]
- to ensure that every employer and every worker performing work on the project complies with the OHSA and the regulations [clause 23(1)(b)], and
- to ensure that the health and safety of workers on the project is protected [clause 23(1)(c)].

Where required in regulation, a constructor must give notice to the Ministry of Labour, Training and Skills Development, containing prescribed information, before work begins on a project [subsection 23(2)]. The Regulation for Construction Projects (O. Reg. 213/91) made under the Act specifies the projects in respect of which notice shall be provided and the content of the notice.

## Duties of owners

## Who is an owner?

An owner is defined in section 1 of the OHSA as "a trustee, receiver, mortgagee in possession, tenant lessee, or occupier of any lands or premises used or to be used as a workplace, and any person who acts for or on behalf of an owner as an agent or delegate." This term includes individuals other than just the person with legal ownership of the premises or land that is being used as a workplace.

An owner may also be an employer under the Act. An owner of a workplace that is not a construction project, such as a factory, warehouse, car dealership, office) also has duties under the OHSA.

An owner must ensure that:

- workplace facilities are provided and maintained as prescribed [clauses 29(1)(a)(i) and (ii)]
- the workplace complies with the regulations [clause 29(1)(a)(iii)]
- no workplace is constructed, developed, reconstructed, altered or added to except in compliance with the Act and regulations [clauses 29(1)(a)(iv)], and
- where prescribed, provide a Director of the MLTSD with drawings, plans or specifications as prescribed [clause 29(1)(b)].

Where prescribed, an owner or employer is required to file with the Ministry of Labour, Training and Skills Development, before any work is done, complete plans (i.e., drawings, layout, specifications and any alterations thereto) for the construction of or change to a workplace [clause 29(3)(a)]. This information will be reviewed by a ministry engineer to determine compliance with the OHSA and regulations. The ministry engineer may also require additional information on the plans from the employer or owner [subsection 29(4)].

If a regulation requires submission of the plans to the Ministry for review by a ministry engineer, a copy must be kept at the workplace and produced for inspection and examination by a ministry inspector upon request [clause 29(3)(b)].

Other requirements apply to owners of mines. For example, the owner of a mine must update drawings and plans every six months and include the prescribed details that are set out under section 22 of Mines and Mining Plants Regulation 854 [subsection 29(2)].

## Duties of owners and constructors concerning designated substances on construction projects

Several duties regarding designated substances apply to all owners of construction projects and constructors.

Before beginning a project, the owner shall determine whether any designated substances are present on the site and shall prepare a list of these substances.

If work on a project is tendered, the person issuing the tenders (e.g. the owner, constructor) shall include the list of designated substances in the tendering information.

Before the owner can enter into a binding contract with a constructor to work on a site where there are designated substances, the owner must ensure that the constructor has a copy of the list of designated substances [subsection 30(3)]. The constructor must in turn ensure that any prospective contractor or subcontractor has a copy of the list before any binding contract for work on the project can be made [subsection 30(4)].

An owner, who fails to comply with the applicable aforementioned duties, is liable to a constructor and every contractor and subcontractor who suffers any loss or damages as a result of the presence of designated substances that were not on the list and that the owner ought reasonably to have known of. The constructor, who fails to comply with the applicable aforementioned duties, is similarly liable for any loss or damages suffered by a contractor or general contractor [subsection 30(5)].

# Duties of suppliers

Every person who supplies workplace equipment of any kind under a rental, leasing or similar arrangement must ensure that:

- the equipment complies with the OHSA and regulations,
- is in good condition and,
- in specified circumstances, is maintained in good condition [subsection 31(1)].

# Duties of licensees

A licensed area is land on which the licensee is authorized to harvest or use forest resources [subsection 24(2)]. A licensee must ensure that, in the licensed area:

- the measures and procedures specified in the Act and regulations are carried out
- every employer logging for the licensee complies with the Act and regulations, and
- the health and safety of workers employed by those employers is protected [subsection 24(1)].

# Duties of corporate officers and directors

Every officer and director of a corporation must take all reasonable care to ensure that the corporation complies with the Act and regulations as well as with any orders and requirements of Ministry of Labour, Training and Skills Development inspectors, directors and the Minister [section 32].

# Contraventions by architects and engineers

Architects and engineers are in contravention of the Act if they negligently or incompetently give advice or a certification required under the Act and, as a result, a worker is endangered [subsection 31(2)].

# Duties of workers

Workers play a key role in health and safety at the workplace. Workers have various duties under the OHSA. Under the OHSA, a worker must:

- work in compliance with the Act and regulations [clause 28(1)(a)]
- use or wear any equipment, protective devices or clothing required by the employer [clause 28(1)(b)]
- report to the employer or supervisor any known missing or defective equipment or protective device that may endanger the worker or another worker [clause 28(1)(c)]
- report any hazard or contravention of the Act or regulations to the employer or supervisor [clause 28(1)(d)]
- not remove or make ineffective any protective device required by the employer or by the regulations other than in circumstances specified below [clause 28(2)(a)]. The only circumstance in which a worker may remove a protective device is where an adequate temporary protective device is provided in its place. Once there is no longer a need to remove the required protective device or to make it ineffective, it must be replaced immediately.
- not use or operate any equipment or work in a way that may endanger any worker [clause 28(2)(b)], and
- not engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct [clause 28(2)(c)]. Racing powered hand trucks in a warehouse or seeing who can pick up the most boxes are examples of unlawful conduct.

Content last reviewed May 2019.

# Part III.0.I: Workplace violence and workplace harassment

This section outlines the workplace violence and workplace harassment provisions of the Act. More detailed information is available in the Ministry of Labour, Training and Skills Development's *Understand the law on workplace violence and harassment*, available from ServiceOntario Publications and on the Ministry of Labour, Training and Skills Development internet website.

The *Occupational Health and Safety Act* (OHSA) sets out the duties of workplace parties in respect of workplace violence and workplace harassment. Violence or harassment in the workplace may originate from anyone the worker comes into contact with in a workplace, such as a client, a customer, a student, a patient, a co-worker, an employer, or a supervisor. Or the person may be someone with no formal connection to the workplace, such as a stranger or a domestic/intimate partner, who brings violence or harassment into the workplace.

A continuum of inappropriate behaviors can occur at the workplace. This can range from offensive remarks to violence.

It is important for employers to recognize and address these unwanted behaviors early because they could lead to workplace violence. The Criminal Code deals with matters such as violent acts, threats and behaviours, such as stalking. The police should be contacted in these situations. Harassment may also be a matter that falls under Ontario's *Human Rights Code*.

The following are key requirements of the Act, with respect to workplace violence and workplace harassment.

## Workplace harassment

Workplace harassment is defined in the OHSA as "engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome" and includes workplace sexual harassment [subsection 1(1)].

The comments or conduct typically happen more than once. They could occur over a relatively short period of time (for example, during the course of one day) or over a longer period of time (weeks, months or years). However, there may be a situation where the conduct happens only once, such as an unwelcome sexual solicitation from a manager or employer.

Workplace harassment can include unwelcome and/or repeated words or actions that are known or should be known to be offensive, embarrassing, humiliating or demeaning to a worker or group of workers. It can also include behaviour that intimidates, isolates or even discriminates against a worker or group of workers in the workplace that are unwelcome.

This definition of workplace harassment is broad enough to include harassment prohibited under Ontario's *Human Rights Code*, as well as what is often called "psychological harassment" or "personal harassment." The Ontario Human Rights Commission has a role in facilitating compliance with the *Ontario Human Rights Code*.

Workplace harassment does not include a reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace [subsection 1(4)].

## Workplace sexual harassment

The OHSA defines workplace sexual harassment as:

- engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is

known or ought reasonably to be known to be unwelcome, or
- making a sexual solicitation or advance where the person making it is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome [subsection 1(1)].

This definition of workplace sexual harassment is similar to the prohibitions on sexual harassment and sexual solicitation found in Ontario's *Human Rights Code*.

# Workplace violence

Workplace violence is defined in the OHSA as:

- the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,
- an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker,
- a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker [subsection 1(1)].

This definition of workplace violence is broad enough to include acts that would constitute offences under Canada's *Criminal Code*.

## Policies

All employers, who are subject to the OHSA, must prepare policies with respect to workplace violence and workplace harassment and review them at least once a year [subsection 32.0.1(1)].

In a workplace where there are six or more regularly employed workers, the policies are required to be in writing and posted in the workplace where workers are likely to see them [subsections 32.0.1(2) and (3)].

## Programs

Employers must set up and maintain programs to implement the workplace violence and workplace harassment policies [subsection 32.0.2(1) and subsection 32.0.6(2)]. A **workplace violence program** must include the following:

- measures and procedures to control risks identified in an assessment of risks as likely to expose a worker to physical injury
- measures and procedures for workers to report incidents of workplace violence
- measures and procedures for summoning immediate assistance when workplace violence occurs or is likely to occur, and
- how the employer will investigate and deal with incidents or complaints of workplace violence [subsection 32.0.2(2)].

A **workplace harassment program** must include the following:

- measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor, and to another person if the employer or supervisor is the alleged harasser
- how incidents or complaints of workplace harassment will be investigated and dealt with
- how information obtained about an incident or complaint of workplace harassment, including identifying information about any individuals involved, will **not** be disclosed unless necessary for the purposes of investigating the incident or complaint, or for taking corrective action, or is otherwise required by law

- how certain workers will be informed of the results of the investigation and of any corrective action [subsection 32.0.6(2)].

The workplace harassment program must be in writing, and must be developed and maintained in consultation with the Joint Health and Safety Committee (JHSC) or health and safety representative, if any [subsection 32.0.6(1)].

# Information and instruction on workplace violence and harassment

Under the OHSA, an employer must provide appropriate information and instruction to workers on the contents of the workplace violence and harassment policies and programs [subsection 32.0.5(2)] and section 32.0.8].

All workers should be aware of the employer's workplace violence and harassment policies and programs. For workplace violence, workers should:

- know how to summon immediate assistance when workplace violence occurs or is likely to occur
- know how to report incidents of workplace violence to the employer or supervisor
- know how the employer will investigate and deal with incidents, threats or complaints of workplace violence
- know, understand and be able to carry out the measures and procedures that are in place to protect them from workplace violence, and
- be able to carry out any other procedures that are part of the program.

For workplace harassment, workers should:

- know how to report incidents of workplace harassment to the employer or supervisor
- know how to report incidents of workplace harassment where the employer or supervisor is the alleged harasser
- know how the employer will investigate and deal with incidents or complaints of workplace harassment
- know how information about an incident or complaint of workplace harassment will be kept confidential unless disclosure is necessary for investigating or taking corrective action, or is otherwise required by law
- know that the results of an investigation and any corrective actions will be provided to the worker who alleged workplace harassment and to the alleged harasser (if the alleged harasser is a worker of the same employer).

Practically speaking, workers may need other information and instruction on workplace violence and harassment, depending on their jobs. For example, supervisors may need additional information or instruction, especially if they are going to follow up on reported incidents or complaints of workplace violence or workplace harassment.

In addition, general duties for employers under section 25, supervisor duties under section 27, and worker duties set out in section 28 apply, as appropriate.

## Specific duties regarding workplace harassment

In order to protect a worker from workplace harassment, the OHSA requires that employers ensure that:

- an investigation is conducted into incidents and complaints of workplace harassment that is appropriate in the circumstances;
- the worker who was allegedly harassed, and the alleged harasser (if he or she is also a worker of the employer), are informed in writing of the results of a workplace harassment investigation and of any corrective action that has been or that will be taken as a result of the investigation; and
- they review the workplace harassment program as often as necessary, but at least annually, to ensure that it adequately implements the workplace harassment policy. [section 32.0.7].

**Results of investigation is not a report**

The OHSA specifies that the results of a workplace harassment investigation, and any report created during, or for the purposes of the investigation, is not a report that is required to be provided to the JHSC or health and safety representative for the purposes of subsection 25(2) [subsection 32.0.7(2)].

## Assessment of risks for workplace violence

The employer must:s

- assess the risks of workplace violence that may arise from the nature of the workplace, type of work or conditions of work [subsection 32.0.3(1)]
- ensure the assessment takes the circumstances into account that are specific to the workplace and circumstances common to similar workplaces [subsection 32.0.3(2)], and,
- include in the workplace violence program measures and procedures to control identified risks identified in the assessment as likely to expose a worker to physical injury [clause 32.0.2(2)(a)].

The employer must advise the joint health and safety committee (JHSC)or health and safety representative, if any, of the assessment results. If the assessment is in writing, the employer must provide a copy to the JHSC or the health and safety representative [clause 32.0.3(3)(a)].

If there is no JHSC or the health and safety representative, the employer must advise workers of the assessment results. If the assessment is in writing, the employer must provide copies to workers on request or advise the workers how to obtain copies [clause 32.0.3(3)(b)].

Employers must repeat the assessment as often as necessary to ensure the workplace violence policy and related program continue to protect workers from workplace violence [subsection 32.0.3(4)] and inform the JHSC, health and safety representative, or workers of the results of the re-assessment [subsection 32.0.3(5)].

Please note that an assessment of the risks of workplace violence should be specific to the workplace.

The OHSA does not require an employer to proactively assess the risks of violence between individual workers. It could be difficult for the employer to predict when violence may occur between individual workers. However, a review of incidents or threats of violence from all sources may indicate the origins of workplace violence and likelihood of violence between workers at a particular workplace.

The OHSA requires employers and supervisors to provide a worker with information, including personal information, related to a risk of workplace violence from a person with a history of violent behaviour [section 32.0.5(3)]. Further details regarding disclosure and limitations of providing information are available in the Ministry of Labour, Training and Skills Development's Understand the law on workplace violence and harassment guide.

## Domestic violence

Employers who are aware of, or who ought reasonably to be aware of, domestic violence that would likely expose a worker to physical injury in the workplace must take every precaution reasonable in the circumstances to protect the worker [section 32.0.4].

Some indicators that domestic violence may occur in the workplace include reported concerns from the targeted worker or other workers, threatening calls or unwelcome visits at the workplace.

Measures and procedures in the workplace violence program can help protect workers from domestic violence in the workplace. For example, measures for the summoning of immediate assistance or for reporting of violent incidents could help protect workers from domestic violence when it may occur in the workplace.

Workers should be told that they can report their concerns to their employer if they fear that domestic violence may enter the workplace.

Employers must be prepared to investigate and deal with these concerns on a case-by-case basis. In addition to evaluating a worker's specific circumstances, employers should determine how measures and procedures in the existing workplace violence program could be used to support the development of reasonable precautions for the worker.

## General duties and application to workplace violence

The general duties under the OHSA for employers [section 25], supervisors [section 27] and workers [section 28] continue to apply with respect to workplace violence [section 32.0.5]. For example, workers would be required to report actual or potential hazards in the workplace relating to workplace violence to their employer or supervisor.

## Other related information and instruction duties

Under the *Occupational Health and Safety Act*, an employer has a general duty to provide information, instruction and supervision to protect a worker [clause 25(2)(a)].

A supervisor has a duty to advise workers of any actual or potential occupational health and safety dangers of which the supervisor is aware [clause 27(2)(a)].

To protect workers, the employer must tailor the type and amount of information and instruction to the specific job and the associated risks of workplace violence.

Workers in jobs with a higher risk of violence may require more frequent or intensive instruction or specialized training.

An employer should identify what information, instruction or training is needed when a worker is hired. This should be done by taking into account hazards associated with each specific job as well as the measures and procedures that are in place.

Similarly, the employer should identify what information, instruction or training is needed when a worker changes jobs.

Workplace violence can be covered along with other occupational health and safety topics, including workplace harassment, or it can be covered separately. Employers should also identify how often instruction or training should be repeated.

This is addressed in more detail in the Ministry of Labour, Training and Skills Development's guideline: *Understand the law on workplace violence and harassment*.

## Work refusal associated with workplace violence

A worker has the right to refuse work in certain circumstances if he or she has reason to believe that workplace violence is likely to endanger himself or herself. For further details on the work refusal process, refer to Part V — Right to refuse or to stop work where health and safety in danger of this guide.

More information and resources is available on the Ministry of Labour, Training and Skills Development's website on workplace violence and harassment.

Content last reviewed May 2019.

# Part III.I: Codes of practice

The Minister of Labour may approve all or part of a code of practice as a way to comply with any legal requirement imposed by the *Occupational Health and Safety Act* (OHSA) or a regulation under the Act and all or part of a code of practice may be subject to terms and conditions set out in the approval. The approval of a code of practice or withdrawal of approval of a code of practice shall be published in the Ontario Gazette.

Approval of a code of practice means that the Ministry will consider compliance with the code to be compliance with its corresponding legal requirement.

This does not mean that a failure to comply with an approved code will, in itself, be considered a breach of the legal requirement.

# Part IV: Toxic substances

In this part of the guide, the term "toxic substance" is used to refer to a biological, chemical or physical agent (or a combination of such agents) whose presence or use (or intended use) in the workplace may endanger the health or safety of a worker. This part also describes additional regulatory requirements relating to hazardous materials and requirements related to hazardous physical agents.

Part IV of the *Occupational Health and Safety Act* (OHSA or "the Act") deals with toxic substances and has two purposes: to ensure that worker exposure to toxic substances is controlled, and to ensure that toxic substances in the workplace are clearly identified and that workers receive enough information about them to be able to use, handle, store, and dispose of them safely.

The OHSA also sets out a process for the general public to access information about toxic substances used by regulated employers in their workplaces.

# The control of toxic substances

There are several ways that worker exposure to toxic substances can be controlled under the OHSA.

## Regulations for designated substances

The OHSA enables the Lieutenant Governor in Council (LGIC) to prescribe a toxic substance as a "designated substance", and to prohibit, regulate, restrict, limit or control its use, handling and removal in regulated workplaces.

Designation is typically reserved for substances known to be particularly hazardous to the health and safety of workers.

Eleven substances have been prescribed as designated substances in one regulation under the Act (*O. Reg. 490/09, Designated Substances*), including asbestos, lead, mercury and arsenic. The regulation prescribes the maximum amount of the designated substances that workers can be exposed to in a given time period and the ways to both control and assess the substances in the workplace. There is also a specific regulation relating to the designated substance asbestos on construction projects, buildings and repair operations (*O. Reg. 278/05 - Designated Substance - Asbestos on Construction Projects and in Buildings and Repair Operations*) as well as a guide to the regulation.

## Regulation for control of exposure to biological or chemical agents

The OHSA enables the LGIC to regulate or prohibit the atmospheric conditions to which a worker may be exposed in the workplace. *Regulation 833: Control of Exposure to Biological or Chemical Agents*, Regulation 833, sets occupational exposure limits (OELs) for over 725 biological and chemical agents.

### "Section 33" order

Where a Director of the Ministry of Labour, Training and Skills Development (MLTSD) is of the opinion that a toxic substance used or intended to be used in the workplace is likely to endanger the health and safety of a worker, section 33 of the OHSA requires the Director of the MLTSD to issue an order to the employer. The order must state that the use, intended use, presence or manner of use be prohibited, limited or restricted as specified, or subject to conditions regarding administrative control, work practices, engineering controls and time limits for compliance [subsection 33(1)]. Section 33 orders do not apply to designated substances [subsection 33(11)].

#### What happens when a section 33 order is issued?

The employer must comply with the order.

The employer must also:

- give a copy of the order to the joint health and safety committee (JHSC), or health and safety representative and trade union, if any
- post in a conspicuous place a copy of the order in the workplace where it is most likely to come to the attention of the workers who may be affected by the use, presence, or intended use of the toxic substance [subsection 33(3)].

#### Can an employer appeal a section 33 order?

Yes. Within 14 days of the order being made the employer, a worker, or a trade union may appeal a s. 33 order by giving written notice to the Minister of Labour [subsection 33(4)].

The Minister may decide the appeal himself or herself or may appoint a person to determine the appeal on his or her behalf [subsection 33(5)]. There is no further appeal of this decision under the OHSA. The Minister or the appointed person has the power to suspend the operation of the order until a decision on the appeal has been made [subsection 33(9)]. He or she can also affirm or rescind the order of the Director or make a new order [subsection 33(7)].

The OHSA specifies the relevant factors the Director must consider when making an order under section 33 and by the Minister or person appointed by the Minister when determining an appeal [subsection 33(8)].

## The right to know about hazardous materials

One of the three basic rights that the OHSA gives to all workers is the right to know about hazards they may be exposed to on the job. Compliance with the OHSA and WHMIS Regulation is necessary to fulfill the workers' right to know about hazardous materials in the workplace. In 1988, the OHSA was amended as part of the Canada-wide implementation of the Workplace Hazardous Materials Information System (WHMIS),ensuring employers and workers receive consistent and comprehensive health and safety information about the hazardous products they may be exposed to at work.

The main purpose of the federal WHMIS legislation is to require suppliers of hazardous products that are intended for use, handling or storage in a workplace, to classify those products and provide health and safety information about them to their customers. The main purpose of provincial and territorial WHMIS legislation is generally to require employers to obtain health and safety information about hazardous products from their suppliers (labels and safety data sheets), and to use that information to provide worker education.

Canada has adopted international standards for classifying hazardous materials and providing information on labels and safety data sheets. These standards are part of the Globally Harmonized System for the Classification and Labelling of Chemicals (GHS) that was generally phased in across Canada. The original WHMIS requirements are generally referred to as WHMIS 1988 and the new ones are called WHMIS 2015.

Implementation of the system was generally phased in across Canada between February 2015 and December 2018. Amendments have been made to applicable sections of the Ontario *Occupational Health and Safety Act* and to *Regulation 860: Workplace Hazardous Materials Information System* (WHMIS) to transition to WHMIS 2015. Effective December 1, 2018, employers subject to Regulation 860 should be in compliance with WHMIS 2015.

Refer to the Ontario government website for an electronic copy of the regulation, *Reg. 860: Workplace Hazardous Materials Information System (WHMIS)*.

While the OHSA uses the term "hazardous materials," the term "hazardous products" is used in Regulation 860 (WHMIS) to align with language in the federal WHMIS legislation. Regulation 860 designates all hazardous products as hazardous materials for the purposes of the OHSA so that provisions in the OHSA related to "hazardous materials" apply.

# Employer's responsibilities concerning hazardous materials

In addition to general employer duties under the OHSA, an employer has specific duties in the OHSA relating to hazardous materials, including the duty to:

- identify hazardous materials in the prescribed manner, e.g., labels [clause 37(1)(a), OHSA]
- obtain or prepare (as may be prescribed) current Safety Data Sheets (SDSs) for all hazardous materials in the workplace [clause 37(1)(b), OHSA]
- ensure workers who are exposed or likely to be exposed to hazardous materials and hazardous physical agents receive, and that the workers participate in, prescribed instruction and training [subsection 42(1), OHSA]
- assess all biological and chemical agents that the employer produces for its own use to determine if they are hazardous materials [subsection 39(1), OHSA, and section 3, WHMIS Regulation]

Prescribed information related to hazardous materials are set out in Regulation 860 (WHMIS), which includes more detailed requirements related to worker education, labelling and safety data sheets, among other things.

References to the WHMIS Regulation in this guide pertains to Ontario *Regulation 860: Workplace Hazardous Materials Information System (WHMIS)*.

Employers are required to ensure that hazardous materials are not handled, used or stored at a workplace unless the prescribed requirements relating to identification, SDSs and worker instruction and training are met [subsection 37(3) of the OHSA].

Where an employer is unable to obtain a required label or SDS after making reasonable efforts to do so, he or she is required to notify a Director of the MLTSD, in writing [subsection 37(4) of the OHSA].

In general, the WHMIS Regulation applies to hazardous products at a workplace and does not include hazardous products being transported or handled according to the requirements in the *Dangerous Goods Transportation Act* (Ontario) or the federal *Transportation of Dangerous Goods Act, 1992*. If a hazardous product is repackaged (assembled, labelled or re-labelled), processed or used, WHMIS requirements may apply. For further details, refer to the relevant legislation.

## Identifying hazardous materials

The employer must ensure that all hazardous materials in the workplace are identified in the prescribed manner and must obtain or prepare, as prescribed, a current SDS for all hazardous materials present in the workplace [clauses 37(1)(a) and (b) of the OHSA].

The employer shall ensure that the SDS is in English and any other prescribed languages [clause 37(1)(c) of the OHSA].

No one is permitted to remove or deface the identification of a hazardous material, including a label or a safety data sheet [subsection 37(1) of the OHSA].

An employer must make certain that a hazardous material is not used, handled or stored at a workplace unless the prescribed requirements regarding identification, SDSs and worker instruction and training are met [subsection 37(3), of the OHSA].

In many situations, the supplier label is the worker's first warning on a hazardous product. Employers who buy the hazardous product should understand the obligations of suppliers who sell it to them. Under WHMIS, employers must ensure that hazardous products received from suppliers are labelled with supplier labels and employers must obtain the supplier SDS.

Suppliers must also provide new data about hazardous products to employers in certain circumstances. Where an employer receives such new data, the employer must, as soon as practicable, attach the new information to every relevant supplier label and update the supplier SDS [subsections 8(5) and 17(2), WHMIS Regulation]. Supplier labels and supplier SDS must also be in English and French, separately or together.

## Providing Safety Data Sheets (SDSs)

The employer has a duty to either obtain or prepare current SDSs for all hazardous materials present in the workplace [clause 37(1)(b)].

The employer is required to update the SDS as soon as it is practicable, but not later than 90 days after significant new data about the hazardous product becomes available to the employer [subsection 18(3), WHMIS Regulation].

The employer may store hazardous product received from a supplier without a label, without obtaining a supplier SDS, and without conducting a program of worker education about it, **only while the employer is actively seeking the supplier label and SDS from the supplier for the hazardous product** [subsection 5(1), WHMIS Regulation]. This is not intended to be a method allowing for permanent storage without proper labelling, etc.

The employer may also store employer-produced hazardous products without applying a label or using other identification, without an SDS and without conducting a program of worker education while the employer is actively seeking information required to produce the workplace label and an SDS [subsection 5(2), WHMIS Regulation]. If, after making reasonable efforts, the employer is unable to obtain an SDS or label, the employer must notify a Director of the MLTSD in writing [subsection 37(4) of the OHSA].

Similar to requirements for the label, where the employer produces the hazardous product at the workplace, the employer is required to prepare an SDS that meets the federal WHMIS requirements under the Canadian Hazardous Products Regulations for an SDS [subsection 18(1), WHMIS Regulation].

Upon request of the parties noted below, an employer who produces a hazardous product in a workplace is required to disclose as quickly as possible under the circumstances, the source of any toxicological data used by the employer to prepare an SDS. The parties that can request the employer to disclose the source of toxicological data include an inspector, a worker at the workplace, a member of the JHSC, a health and safety representative or, where there is no JHSC or health and safety representative, a worker representative [section 25, WHMIS

Regulation].The employer may withhold confidential business information (e.g. a valid trade secret) in certain circumstances.

For the purposes of clause 25 (2) (b) of the OHSA, in a medical emergency, an employer is required to provide information, including confidential business information, upon request, to a medical professional for the purpose of diagnosis or treatment [section 24, WHMIS Regulation].

No workplace label, identification or SDS is required for a fugitive emission, or for a hazardous product that exists only as an intermediate and undergoes further reaction within a process or reaction vessel, e.g., a volatile organic compound such as benzene at a chemical plant escaping due to leakage from a valve [subsection 1(2), WHMIS Regulation].).

The employer is required to make copies of current SDSs available to:

- workers
- to the JHSC or to the health and safety representative, if any
- the relevant medical officer of health of the health unit in which the workplace is located if requested or prescribed
- the local fire department if requested or prescribed
- a Director of the Ministry of Labour, Training and Skills Development if requested or prescribed [subsection 38(1) of the OHSA].

Employers must also make a copy of SDSs **readily** available to those workers that may be exposed to the hazardous material to which the SDS relates [subsection 38(1)]. An electronic version of an SDS is considered a copy [subsection 38].

Wider distribution of safety data sheets is discussed later in this chapter, in the section "Public access to Safety Data Sheets."

The employer is permitted to make safety data sheets (SDSs) available to workers by means of a computer terminal, if the employer,

- takes all reasonable steps to keep the computer terminal in working order
- provides a paper copy of the SDS if requested by a worker, and
- provides training on how to access computer-stored data sheets, to all workers working with or in proximity to controlled products, and to members of the JHSC or a health and safety representative.

## Worker education

The employer has a specific duty to provide prescribed instruction and training to workers who are exposed or likely to be exposed to a hazardous material or hazardous physical agent on the job [subsection 42(1) of the OHSA]. Employers are further required to ensure that workers participate in any prescribed instruction/training. This is in addition to the general employer duty to provide information, instruction and supervision to workers to protect their health and safety in clause 25(2)(a) of the OHSA.

In addition, the employer must consult the JHSC, or health and safety representative, if any, in developing and implementing prescribed instruction and training for workers exposed or likely to be exposed to a hazardous material or hazardous physical agent. [subsection 42(2) of the OHSA].

The employer must inform the workers who work with or who may be exposed in the course of his or her work to a hazardous product received from a supplier about all the hazard information received from the supplier about the hazardous product, as well as further hazard information that the employer is aware of or ought to be aware of regarding the storage, use and handling of the product [subsection 6(1), WHMIS Regulation]. In general, this refers to the information provided on supplier labels and safety data sheets, but it can also include other information such as letters from the supplier in response to inquiries from the employer.

If the employer produces the hazardous product in the workplace, the employer must inform the workers who work with or who may be exposed in the course of their work to the hazardous product about all hazard information of which the employer is aware, or ought to be aware regarding its storage, use and handling [subsection 6(2), WHMIS Regulation ].

Information that employers may wish to consider include:

- publications and computerized information available from the Canadian Centre for Occupational Health and Safety (CCOHS)
- publications available from industry or trade associations of which the employer is a member and from labour organization(s) representing workers at the workplace, and
- publications from the Ontario Ministry of Labour, Training and Skills Development (MLTSD).

Employers must ensure that workers who work with or who may be exposed in the course of their work to a hazardous product are instructed in the following areas [subsection 7(1), WHMIS Regulation]:

- the information required on labels, and the purpose and significance of that information
- the information required on SDSs, the purpose and significance of that information
- procedures for the safe use, storage, handling and disposal of a hazardous product, including when a hazardous product is contained or transferred in a pipe, a piping system, a process vessel, a reaction vessel, or a tank car, a tank truck, an ore car, a conveyor belt or a similar conveyance
- procedures to be followed where fugitive emissions are present
- procedures to be followed in case of an emergency involving a hazardous product.

The employer must ensure that the program of worker education is developed and implemented for the employer's workplace and is related to any other training, instruction and prevention programs at the workplace [subsection 7(2), WHMIS Regulation].

An employer shall ensure, so far as is reasonably practicable, that the program of worker instruction required by subsection 7(1) results in the workers being able to use the information to protect their health and safety [subsection 7(3), WHMIS Regulation].

# New biological and chemical agents

The OHSA requires that except for the purposes of research and development, no new biological and/or chemical agents shall be manufactured, distributed or supplied for commercial or industrial use in a workplace, unless:

- a written notice of intention to manufacture, distribute or supply the new agent is first submitted to a Director of the MLTSD
- the notice includes the ingredients of the new agent and their common or generic name(s) and their composition and properties [subsection 34 (1) of the OHSA].

## Assessment for hazardous materials

The OHSA requires that, in prescribed circumstances, an employer assess all biological and chemical agents produced in the workplace for use in it, to determine if the agents are hazardous materials. This assessment must be in writing. A copy of the assessment must be made available in the workplace to allow examination by workers and provided to the JHSC or health and safety representative, if any, or to a worker selected by the workers to represent them if there is no JHSC or health and safety representative [section 39 of the OHSA].

# Process for public access to Safety Data Sheets (SDSs)

The OHSA provides for the distribution of SDSs outside the workplace in certain circumstances. Specifically, upon request or where prescribed, the employer must provide the SDS to the following:

- the medical officer of health of the health unit where the workplace is located
- the local fire department
- a Director of the Ministry of Labour, Training and Skills Development [subsection 38(1)]

It is through the medical officer of health that the public has access to SDSs. Upon request by any person, the medical officer of health must ask an employer to provide a copy of a current SDS or must make available a copy of any SDS requested by the person in the medical officer of health's possession [subsections 38(2) and (3)].

The medical officer of health is prohibited from disclosing the name of any person asking to see an SDS as described above [subsection 38(4)].

# Confidential business information

The *Occupational Health and Safety Act* (OHSA or "the Act") provides protection for certain types of confidential business information that are prescribed by regulation. Employers may file a claim for an exemption from disclosing information that is normally required on a label or SDS or the name of a toxicological study that was used by the employer to prepare a SDS on the basis that it is confidential business information [subsection 40(1), OHSA]. An employer that claims an exemption for confidential business information will have the claim determined by Health Canada, according to procedures set out in the federal HMIRA (*Hazardous Materials Information Review Act*) [subsection 40(3), OHSA]. Where a claim is successful, an employer is not required to disclose the confidential business information on a label or SDS but must include certain information about the exemption instead [sections 20 and 21, WHMIS Regulation]. The WHMIS Regulation sets out types of information for which an employer may claim an exemption [section 19, WHMIS Regulation].

A form for the request of an exemption can be obtained by sending an email to the following address: hc.whmis.claim-demande.simdut.sc@canada.ca.

Details regarding confidential business information and the application process is on the Government of Canada website.

# WHMIS enforcement

MLTSD is responsible for enforcement of both the federal and Ontario WHMIS legislation. This is done so that employers and suppliers will not be subject to inspections by both federal and provincial inspectors. It means that MLTSD inspectors monitor compliance with the federal *Hazardous Products Act* (HPA), the *Hazardous Products Regulations* (HPR), as well as the OHSA, and the WHMIS Regulation.

# Hazardous physical agents

Physical agents include noise, heat, cold, vibration and radiation. Hazardous physical agents are covered by the OHSA [section 41] and in circumstances where there are no specific requirements that address the use of potentially hazardous physical agents in the workplace, employers must take every precaution reasonable in the circumstances for the protection of workers [clause 25(2)(h)], in addition to other duties in the OHSA.

Content last reviewed May 2019.

# Part V: Right to refuse or to stop work where health and safety in danger

## The right to refuse work

The *Occupational Health and Safety Act* (OHSA) gives a worker the right to refuse work that he or she believes is unsafe to himself/ herself or another worker. A worker who believes that he or she is endangered by workplace violence may also refuse work.

The Act sets out a specific procedure that must be followed in any work refusal. It is important that workers, employers, supervisors, members of joint health and safety committees (JHSCs) and health and safety representatives understand the procedure for a lawful work refusal.

## Procedure for a work refusal

### First stage

1. Worker considers work unsafe.
2. Worker reports refusal to his/her supervisor or employer. Worker may also wish to advise the worker safety representative and/or management representative. Worker stays in safe place.
3. Employer or supervisor investigates in the presence of the worker and the worker safety representative.
4. Either:
    a. **Issue resolved.** Worker goes back to work.
    b. **Issue not resolved.** Proceed to the second stage

#### Second stage

1. With reasonable grounds to believe work is still unsafe, worker continues to refuse and remains in safe place. Worker or employer or someone representing worker or employer calls MOL.
2. MOL Inspector investigates in company of worker, safety representative and supervisor or management representative.*
3. Inspector gives decision to worker, management representative/supervisor and safety representative in writing.
4. Changes are made if required or ordered. Worker returns to work.

* Pending the MOL investigation:

- The refusing worker may be offered other work if it doesn't conflict with a collective agreement
- Refused work may be offered to another worker, but management must inform the new worker that the offered work is the subject of work refusal. This must be done in the presence of:
    - a member of the joint health and safety committee who represents workers; or
    - a health and safety representative, or
    - a worker who because of his or her knowledge, experience and training is selected by the trade union that represents the worker or, if there is not trade union, by the workers to represent them.

## Do all workers have the right to refuse unsafe work?

The right to refuse unsafe work applies to all workers other than specified types of workers in specified circumstances. For further information, please refer to subsections 43(1) and (2) of the Act.

In specified circumstances, the right to refuse unsafe work is limited for:

- police officers
- firefighters
- workers employed in the operation of correctional institutions and similar institutions/facilities
- health care workers and persons employed in workplaces like hospitals, nursing homes, sanatoriums, homes for the aged, psychiatric institutions, mental health centres or rehabilitation facilities, residential group homes for persons with behavioural or emotional problems or a physical, mental or developmental disability, ambulance services, first aid clinics, licensed laboratories—or in any laundry, food service, power plant or technical service used by one of the above [subsection 43(2)].

# When can a worker refuse to work?

A worker can refuse to work if he or she has reason to believe that:

- any machine, equipment or tool that the worker is using or is told to use is likely to endanger himself or herself or another worker [clause 43(3)(a)]
- the physical condition of the workplace or workstation is likely to endanger himself or herself [clause 43(3)(b)]
- workplace violence is likely to endanger himself or herself [clause 43(3)(b.1)]
- any machine, equipment or tool that the worker is using, or the physical condition of the workplace, contravenes the Act or regulations and is likely to endanger himself or herself or another worker [clause 43(3)(c)].

# What happens when a worker refuses unsafe work?

The worker must immediately tell the supervisor or employer that the work is being refused and explain the circumstances for the refusal [subsection 43(4)].

The supervisor or employer must investigate the situation immediately, in the presence of the worker and one of the following:

- a joint health and safety committee member who represents workers, if there is one. If possible, this should be a certified member, or
- a health and safety representative, in workplaces where there is no joint health and safety committee, or
- another worker, who, because of knowledge, experience and training, has been chosen by the workers (or by the union) to represent them.

The refusing worker must remain in a safe place that is as near as reasonably possible to his or her workstation, and remain available to the employer or supervisor for the purposes of the investigation, until the investigation is completed [subsection 43(5)]. Although not stated as such in the Act, this interval is informally known as the "first stage" of a work refusal. If the situation is resolved at this point, the worker will return to work.

# What if the refusing worker is not satisfied with the result of the first stage investigation?

The worker can continue to refuse the work if he or she has reasonable grounds for believing that the circumstances that caused the worker to initially refuse work continue [subsection 43(6)]. At this point, the "second stage" of a work refusal begins.

# What happens if a worker continues to refuse to work?

If the worker continues to refuse to work after the completion of the employer's investigation, the worker, the employer or someone acting on behalf of either the worker or employer must notify a Ministry of Labour, Training and Skills Development inspector. The inspector will come to the workplace to investigate the refusal in consultation with the worker and the employer (or a representative of the employer). If there is a joint health and safety committee member, a worker health and safety representative or a worker selected by the worker's trade union or, if there is no trade union, by the workers to represent the worker, they will also be consulted as part of the inspector's investigation [subsection 43(7)].

While waiting for the inspector's investigation to be completed, the worker must remain in a safe place that is as near as reasonably possible to his or her workstation and available to the inspector for the purposes of the investigation, unless the employer assigns some other reasonable alternative work during normal working hours or gives other directions to the worker where an assignment of reasonable alternative work is not practicable [subsections 43(10) and (10.1)].

The inspector must decide whether the circumstance(s) that led to the work refusal is likely to endanger the worker (or another person). The inspector's decision must be given, in writing, to the worker, the employer, and the worker representative, if there is one. If the inspector finds that the circumstance is not likely to endanger anyone, the refusing worker is expected to return to work. If the inspector finds that the circumstance(s) is likely to endanger the worker or another person, the inspector will typically order the employer to remedy the hazard.

## Can another worker be asked to do the work that was refused?

Yes. While waiting for the inspector to investigate and give a decision on the refusal, the employer or supervisor can ask another worker to do the work that was refused. The second worker must be told that the work was refused and why. This must be done in the presence of a committee member who represents workers, or a health and safety representative, or a worker representative chosen because of knowledge, experience and training [subsections 43(11) and (12)].

The second worker has the same right to refuse the work as the first worker.

## Is a worker paid while refusing to work?

The Ministry is of the view that the worker is at work during the first stage of a work refusal and is entitled to be paid at his or her appropriate rate.

A person acting as a worker representative during a work refusal is paid at either the regular or the premium rate, whichever is applicable [subsection 43(13)].

## Can an employer discipline a worker for refusing to work?

No. The employer is expressly prohibited from penalizing, dismissing, disciplining, suspending or threatening to do any of these things to a worker who has obeyed or sought enforcement of the OHSA [subsection 50(1)]. Please see Part VI of this guide – Reprisals by the employer prohibited – for more information.

## The right to stop work

The *Occupational Health and Safety Act* permits specified persons to stop work in "dangerous circumstances".

In most cases, it takes both worker and management certified joint health and safety committee members to direct an employer to stop dangerous work (joint stoppage). One must be a certified member representing workers; the other, a certified member representing the employer. In some special cases, a single certified member may have this right. This chapter explains how and when work can be stopped.

## Dangerous circumstances

Work can be stopped only in "dangerous circumstances" [subsection 44(1)].

This means a situation in which all of the following apply:

- the Act or the regulations are being contravened, and
- the contravention poses a danger or a hazard to a worker, and
- any delay in controlling the danger or hazard may seriously endanger a worker.

## Limitations on the right to stop work

The right to stop work in dangerous circumstances does not apply to workplaces in which police and, firefighters are employed or to correctional institutions [clause 44(2)(a)] or to workplaces in which specified types of health workers are employed and where the work stoppage would directly endanger the life, health or safety of another person [clause 44(2)(b)].

## Joint right to stop work

If a certified member of the joint health and safety committee has reason to believe that "dangerous circumstances" exist, he or she may ask a supervisor to investigate. The supervisor must do so promptly and in the presence of the certified member who made the request. This certified member may be one representing either the workers or the employer [subsection 45(1)].

## What happens if the certified member has reason to believe that the dangerous circumstances continue to exist?

If the certified member believes that dangerous circumstances still exist after the conclusion of the supervisor's investigation and any remedial action taken, he or she may ask another certified member (who represents the other workplace party) to investigate [subsection 45(2)]. The second certified member must do so promptly and in the presence of the first certified member [subsection 45(3)].

The second certified member must represent the other workplace party. For example, if the first certified member represents workers, the second must represent the employer.

In prescribed instances, a certified member who represents the constructor or employer but who is not available at the workplace, may designate another person to act for him or her in a work stoppage under section 45 [subsection 45(9)].

## What happens if both certified members agree that dangerous circumstances exist?

The certified members can direct the employer to stop the work or to stop using any part of the workplace or any equipment, machinery, tools, etc. [subsection 45(4)].

The employer must comply with this direction immediately and must ensure that compliance is achieved in a way that does not endanger anyone [subsection 45(5)].

After taking steps to remedy the dangerous circumstances, the employer may request the certified members of the joint health and safety committee who issued the stop work direction, or a Ministry of Labour, Training and Skills Development inspector, to cancel it [subsection 45(7)]. Only the certified members who issued the direction or a Ministry of Labour, Training and Skills Development inspector may cancel it [subsection 45(8)].

### What if the certified members do not agree with each other that dangerous circumstances exist?

If the certified members disagree, either member may ask a ministry inspector to investigate. The Act requires the inspector to investigate and provide both certified members with his or her written decision [subsection 45(6)].

## Unilateral work stoppage

### Application to the Ontario Labour Relations Board

If any certified member in the workplace, or a Ministry of Labour, Training and Skills Development inspector has reason to believe that the procedure for joint stoppage of work will not be sufficient to protect the workers from serious risk to their health or safety, he or she may apply to the Ontario Labour Relations Board (OLRB) for a specified declaration or recommendation against the employer [subsection 46(1)], which are described in greater detail below.

### Role of the OLRB

In this type of application, the OLRB, using prescribed criteria, must determine if the employer has failed to protect the health and safety of workers. The criteria to be used by the OLRB are prescribed in the O. Reg. 243/95, Criteria To Be Used And Other Matters To Be Considered By The Board Under Subsection 46 (6) of Act [subsection 46(6)].

If the OLRB finds that the procedure for joint stoppage of work is not sufficient to protect the workers, it may do one or both of the following:

- declare that the employer is subject to the procedure for individual stoppage of dangerous work (explained below) for a specified period [clause 46(5)(a)]
- recommend to the Minister that an inspector be assigned, for a specified period, to oversee the health and safety practices of the employer. The inspector can be assigned on a part time or full time basis for a specified period of time [clause 46(5)(b)].

The decision of the OLRB on an application is final [subsection 46(7)].

### Procedure for the unilateral right to stop dangerous work

This procedure applies to a constructor or employer against whom the OLRB has issued a declaration under section 46 of the Act. It also applies to an employer who has advised the joint health and safety committee, in writing, that he or she voluntarily adopts the following procedure [subsection 47(1)].

If a certified member finds that dangerous circumstances exist, he or she can direct the employer to stop work or to stop using any part of the workplace or any equipment, machinery, tools, etc. [subsection 47(2)].

The employer must comply immediately and must achieve compliance in a way that does not endanger anyone [subsection 47(3)].

After stopping the work, the constructor or employer must promptly investigate in the presence of the certified member [subsection 47(4)].

After taking steps to remedy the dangerous circumstances, the employer can ask the certified member, or an inspector, to cancel the direction [subsection 47(6)]. The certified member, who made the direction or an inspector may cancel it [subsection 47(7)].

A certified member who receives a complaint that dangerous circumstances exist is entitled to investigate the complaint and to be paid for the time spent in exercising powers and performing duties during work stoppages.

## Responsible use of the right to stop work

Where a constructor, employer, worker in the workplace or representative of a trade union in the workplace has reasonable grounds to believe that the certified member recklessly or in bad faith exercised, or failed to exercise powers under section 45 or section 47 to stop work in dangerous circumstances, he or she may file a complaint with the OLRB The complaint must be filed within 30 days of the event to which the complaint relates. The Minister may be a party to these proceedings before the OLRB.

The Board is required to make a decision in respect of the complaint and may make any order that it considers appropriate (including the decertification of a certified member.)

The decision of the OLRB is final.

# Part VI: Reprisals by the employer prohibited

The *Occupational Health and Safety Act* (OHSA) prohibits employers from penalizing workers in reprisal for obeying the law or exercising their rights.

Under section 50 of the OHSA, an **employer** cannot

- dismiss (or threaten to dismiss) a worker
- discipline or suspend a worker (or threaten to do so)
- impose (or threaten to impose) any penalty upon a worker, or
- intimidate or coerce a worker…

because a **worker** has

- followed the OHSA and regulations
- exercised rights under the OHSA, including the right to refuse unsafe work
- asked the employer to follow the OHSA and regulations.

A **worker** also cannot be penalized for

- providing information to a Ministry of Labour inspector
- following a Ministry of Labour inspector's order, or
- testifying at a hearing about OHSA enforcement
    - in court
    - before the Ontario Labour Relations Board
    - before the Human Rights Tribunal of Ontario or similar organization
    - at a coroner's inquest
    - at a grievance arbitration, and
    - in certain other hearings.

## Workers

A worker who believes that the employer has reprised against him or her may file a complaint with the Ontario Labour Relations Board (OLRB). A unionized worker may choose to ask the union to file a grievance under the collective agreement or to seek its help in filing a complaint directly on the worker's behalf with the OLRB.

Alternatively, a worker claiming to have been fired in an OHSA-related reprisal may consent to having a Ministry of Labour inspector refer the reprisal allegation to the OLRB, if

- the allegation has not already been dealt with by arbitration, and
- the worker has not filed a complaint to the OLRB.

The inspector will also provide copies of the referral to the employer, trade union (if any) and other organizations affected by the alleged reprisal. However, the Ministry of Labour will not act as the worker's representative.

The Ministry of Labour will also investigate the health and safety concerns related to a reprisal complaint or referral.

The OLRB can look into a worker's complaint or a referral from the Ministry of Labour and try to mediate a settlement between the workplace parties. If a settlement cannot be reached, the OLRB may hold a consultation or hearing. The OLRB may make orders to

- remove or change any penalty the employer may have imposed
- reinstate/rehire the worker, and/or
- compensate the worker for related losses.

The OLRB will provide forms for filing reprisal complaints.

The Office of the Worker Adviser (OWA) or the Toronto Workers' Health & Safety Legal Clinic can provide workers with free advice on filing complaints and representation at mediations and hearings before the OLRB.

## Employers

If there is an allegation of reprisal before the OLRB, it's up to the employer to refute it. The Office of the Employer Adviser (OEA) can provide free assistance and representation at mediations and hearings before the OLRB to employers with fewer than 50 employees. Also, employers can contact the Law Society of Upper Canada, which will put them in touch with a lawyer who may provide a free initial consultation.

For information resources related to reprisals refer to Appendix C.

# Part VII: Notices

# Notices required from employers

For detailed information regarding notices and prescribed information that may apply to your workplace, refer to the Ministry of Labour (MOL) website, titled "Reporting Workplace Incidents or Structural Hazards".

### Notices of death or injury

If a person, whether a worker or other person, has been critically injured or killed at the workplace, the employer and constructor, if any, must immediately notify, by telephone or other direct means:

- a Ministry of Labour (MOL) inspector (report the incident to the Ministry of Labour's Health and Safety Contact Centre at **1-877-202-0008**. The employer or constructor can make a report to this number **at any time of day**)
- the joint health and safety committee (JHSC) or health and safety representative, if any, and
- the trade union, if there is one.

Within 48 hours, the employer must also send a written report to a Director of the Ministry, setting out the circumstances of the occurrence containing the information and particulars (or details) that may be prescribed [subsection 51(1)]. Please consult the applicable sector regulation to determine what information is required.

Self-employed people are required to notify a Director of the MOL, in writing, if they sustain an occupational injury or illness.

## Notice of accident, explosion, fire or violence causing injury

If an accident, explosion, fire or incident of workplace violence occurs at the workplace, and as a result, a person needs medical attention or is disabled from doing his or her usual work, but no one dies or is critically injured as a result of the occurrence, the employer must:

- provide written notice to the JHSC (or health and safety representative) and the trade union, if any, within four days of the incident, and
- make sure that the notice contains any prescribed information and particulars [section 52(1)]
- provide the notice to a Director of the Ministry if required by an inspector.

If the injury took place on a construction project or at a mine or mining plant, additional notification rules may apply depending on the type of event.

Depending on the workplace, you may be required to keep a record of the incident in your permanent records.

## Occupational illness

If an employer is informed that a worker has an occupational illness or that a claim for an occupational illness has been filed with the Workplace Safety and Insurance Board (WSIB) in respect of an occupational illness, the employer must:

- provide written notice to a Director of the MOL, the JHSC (or health and safety representative) and the trade union, if any, within four days, and
- make sure that the notice contains any prescribed information and particulars [subsection 52(2)]
- provide the written notice not only for current workers of the employer but also to former ones [subsection 52(3)].

## Accident, etc., at project site or mine

When specified incidents occur, such as an accident, premature or unexpected explosion, fire, flood, or inrush of water, failure of any equipment, machine, device, article or thing, a cave-in, subsidence or rockburst, the constructor of a project or the employer of a worker who works in a mine or plant or certain persons prescribed for prescribed locations, are required to provide written notice of the occurrence, containing prescribed information and particulars to a Director of the MOL, unless a report under section 51 or a notice under section 52 has already been given to a Director, the JHSC (or health and safety representative) and the trade union, if any, within two days. The notice must contain any prescribed information [section 53]. An example of an accident or unexpected event in this situation could be an explosion that occurred in which no one was injured.

Employers who do not own the workplace, i.e., those who lease or rent the workplace from an owner, are required to notify a Director of the MOL if a JHSC or a health and safety representative, if any, has identified potential structural inadequacies of a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, as a source of danger or hazard to workers [clause 25(2)(n) and subsection 25(5)].

A structural inadequacy could be an issue with part of the workplace building or structure that may be faulty and/or unsafe due to:

- damage
- distress
- deterioration or instability of a roof, wall, beam or support
- severe watertightness issues such as a failed waterproofing system

This could include the building or any other part of the workplace, whether temporary or permanent.

In addition to notice requirements in sections 51, 52 and 53, the regulations may specify additional notice requirements that must be met in the circumstances described in those sections, including specifying who is required to provide the notice, the timeframe in which it shall be provided and any other information and particulars it must contain [section 53.1].

### Notices of project

In prescribed circumstances, a constructor may also be required to give written notice to the MOL, containing prescribed information, before work begins on a project [subsection 23(2)].

Content last reviewed May 2019.

# Part VIII: Enforcement

Where workplace parties do not voluntarily comply with the *Occupational Health and Safety Act* (OHSA) and regulations, the Ministry may exercise its administrative and/or regulatory enforcement powers. Enforcement may include the issuance of requirements or administrative orders against the non-compliant workplace party and where appropriate may result in a regulatory prosecution under the *Provincial Offences Act* (POA).

Ministry of Labour, Training and Skills Development health and safety inspectors are typically appointed as Provincial Offences Officers under the POA. Their powers include the following:

- proactive and reactive inspections of provincially regulated workplaces
- issuance of requirements or administrative orders where there is a contravention of the OHSA or its regulations
- investigation of critical injuries, fatalities, work refusals and health and safety complaints, and,
- initiate prosecution under the POA in respect of offences under the OHSA and/or its regulations.

A prosecution may be initiated when the inspector has reasonable and probable grounds to believe that a workplace party has committed an offence. This means that prosecutions may be commenced against any workplace party who commits an offence.

# Workplace inspections

Workplace inspections are carried out by Ministry of Labour, Training and Skills Development health and safety inspectors to ensure compliance with the *Occupational Health and Safety Act* and regulations and to ensure that the internal responsibility system is working. During inspections, inspectors may provide workplace parties with compliance assistance, such as referring them to the relevant health and safety association for information about specific areas of occupational health and safety.

#### How often are inspections conducted?

It depends on a variety of factors, such as the type of workplace, its size and its past health and safety record. Inspections may also be conducted in response to a specific complaint about a workplace. In the case of a complaint, the Ministry does not disclose any information about the identity of the complainant.

The inspection involves a thorough examination of the physical condition of the workplace by the inspector, who is usually accompanied by both employer and worker health and safety representatives or members of the joint health and safety committee.

**What are some of the powers of an inspector?**

The inspector has various powers, including the authority to:

- enter any workplace without a warrant or notice [clause 54(1)(a)]
- question any person, either privately or in the presence of someone else, who may be connected to an inspection, examination or test [clause 54(1)(h)]
- handle, use or test any equipment, machinery, material or agent in the workplace and take away any samples [clauses 54(1)(b) and (e)]
- look at any documents or records and take them from the workplace in order to make copies [clauses 54(1)(c) and (d)]. The inspector must provide a receipt for the removed documents and return them promptly after making copies
- take photographs [clause 54(1)(g)]
- require that any part of a workplace, or the entire workplace, not be disturbed for a reasonable period of time in order to conduct an examination, inspection or test [clause 54(1)(i)]
- require that any equipment, machinery or process be operated or set in motion or that a system or procedure be carried out that may be relevant to an examination, inquiry or test [clause 54(1)(j)]
- look at and copy any material concerning a worker training program [clause 54(1)(p)] or be able to attend the training programs
- direct a joint health and safety committee member representing workers, or a health and safety representative, to inspect the workplace at specified intervals [section 55]
- require the employer, at his or her expense, to have an expert test and provide a report on any equipment, machinery, materials, agents, etc. [clause 54(1)(f)]
- require the employer, at his or her expense, to have a professional engineer test any equipment or machinery and verify that it is not likely to endanger a worker [clause 54(1)(k)], and stop the use of anything, pending such testing [clause 54(1)(l)], and
- require an owner, constructor or employer to provide, at his or her expense, a report from a professional engineer that assesses the structural soundness of a workplace [clause 54(1)(m)].

It is important to note that an inspector may only enter a private dwelling or part of a dwelling that is actually being used as a workplace with the consent of the occupier or under the authority of a warrant issued by a court under the OHSA or the Provincial Offences Act.

**Who can accompany the inspector?**

In addition to persons selected by the employer, the employer has a duty to afford a worker representative the opportunity to accompany the inspector during an inspection. This person may be a worker member of the joint health and safety committee, a health and safety representative, or another knowledgeable and experienced worker (selected by the union, if there is one) [subsection 54(3)]. This worker is considered to be at work during the inspection and must be paid at the applicable rate of pay.

If there is no such worker representative, during the inspection the inspector must endeavour to talk to a reasonable number of workers about their health and safety concerns during the inspection [subsection 54(4)].

The inspector may also be accompanied by a person with special, expert or professional knowledge. For example, an inspector may bring an engineer into a workplace to test machinery for purposes of operator safety [clause 54(1)(g)].

## Everyone in the workplace is expected to co-operate

The Act prohibits any person from obstructing, hindering, molesting or interfering with an inspector or attempting to do so while the inspector is exercising powers or performing duties under the Act,[subsection 62(1)]. Moreover, the Act requires every person to assist an inspector in the exercise of his or her powers and duties and in the execution of a search warrant.

It is an offence to interfere in any way with an inspector. This includes giving false information, failing to give required information or interfering with any monitoring equipment left in the workplace.

# Inspector's orders

The inspector will issue written orders to the employer to comply with the law within a certain time period or, if the hazard is imminent, to comply immediately or stop work. An inspector's order can require the employer to submit a plan to the ministry, specifying when and how he or she will comply with the order. An inspector may also make written observations for improved health and safety practices.

## Stop work orders

Where an order has been issued to correct a contravention of the Act or regulations, and the contravention in question is dangerous to the health or safety of a worker, the inspector may also order that:

- any place, equipment, machinery, material, process, etc., not be used until the order has been complied with [clause 57(6)(a)]
- the work be stopped [clause 57(6)(b)] until the stop work order is cancelled or withdrawn by the inspector
- the workplace be cleared of workers and access to the workplace be prevented until the hazard is removed [clause 57(6)(c)]. No worker can be required or permitted to enter the workplace except to remove the hazard, and then only if the worker is protected from the hazard [section 58], and
- any hazardous material not be used [subsection 57(8)].

Where the inspector has stopped work, the employer may resume work, or the use of any equipment, machinery, etc., before a further inspection under the following two conditions:

- the employer has notified an inspector that the order has been complied with, and
- a joint health and safety committee member representing workers or a health and safety representative advises an inspector that, in his or her opinion, the order has been complied with [subsection 57(7)].

## Employer's notice of compliance with an order

If an inspector has issued an order to an employer to remedy a contravention of the Act or regulations, the employer must send written notification to the Ministry within three days of when the employer believes the order has been complied with [subsection 59(1)].

This notice must be signed by the employer. It must also be accompanied by a signed statement from a worker member of the joint health and safety committee or a health and safety representative, indicating that he or she agrees or disagrees with the employer's notice of compliance with the order or a statement indicating that the member or representative has declined to sign the statement [clauses 59(2)(a) and (b)].

The joint health and safety committee member or representative can decline to sign such a statement. One reason might be that the member or representative may feel that he or she cannot properly evaluate the employer's compliance with the order. In such a case, the employer must submit, along with the compliance notification, a statement that the member or representative declined to sign the statement of agreement or disagreement [clause 59(2)(b)].

The employer must post copies of both the notice of compliance and the original order in a place where they are most likely to be seen by workers. The notice must be posted for 14 days following its submission to the Ministry [subsection 59(3)].

The employer's notice of compliance to the Ministry of Labour, Training and Skills Development does not mean that compliance with an order has been achieved. Compliance with an order can be determined only by a Ministry inspector [subsection 59(4)].

### Posting orders and reports in the workplace

When an inspector issues an order or a report of the inspection, a copy of the order or report must be posted in the workplace, where it is most likely to be seen by the workers. A copy must also be given to either the joint health and safety committee or the health and safety representative [subsection 57(10)]. Where the order resulted from a complaint regarding a contravention and the complainant requests a copy, the inspector must ensure that a copy is provided to that person.

#### Can an inspector's orders be appealed?

Yes, any employer, constructor, licensee, owner, worker or union who is aggrieved by an inspector's order can appeal to the Ontario Labour Relations Board (OLRB) within 30 days of the order being issued [subsection 61(1)]. The party appealing can also ask the OLRB to suspend the order until the appeal has been decided. If an inspector decides not to issue an order, that decision can also be appealed [subsection 61(5)].

The OLRB will hear and make a decision on the appeal as promptly as possible under the circumstances.

In making a decision, the OLRB has all the powers of an inspector and can uphold the order of the inspector, rescind it or issue a new order. The decision of the OLRB is final.

### Scene of a critical or fatal injury

If a person is critically injured or killed at a workplace, no person can alter the scene where the injury occurred in any way without the permission of an inspector.

This does not apply if it is necessary to disturb the scene in order to:

- save a life or relieve human suffering
- maintain an essential public utility service or public transportation system, or
- prevent unnecessary damage to equipment or other property [subsection 51(2)].

## Part IX: Offences and penalties

The Ministry may initiate a prosecution against any regulated person (including employers, supervisors, and workers) for a contravention of the Act or the regulations, or for failing to comply with an order of an inspector, a director or the minister [subsection 66(1)]. These prosecutions are conducted by the Ministry of the Attorney General lawyers or paralegals on behalf of the Ministry of Labour.

If convicted, a court may impose a fine and/or jail term against an individual defendant. The maximum fine per charge for an individual is $100,000 and/or imprisonment for up to 12 months.

The maximum fine, which can be imposed on a corporation convicted of an offence, is $1,500,000 per charge [subsections 66(1) and (2)].

Court Bulletins reporting on some *Occupational Health and Safety Act* conviction outcomes can be viewed on the Government of Ontario website.

# Part X: Regulations

The *Occupational Health and Safety Act* gives the Lieutenant Governor in Council broad powers to make regulations under the Act. The regulations relate to a range of subjects including, for example, specific requirements for specific types of workplaces (industrial establishments, construction sites, mines and health care facilities, farming operations), designated substances, and workplace hazardous materials.

Please note that in order to determine which regulatory requirements are applicable to you and your workplace, it is recommended that you check the e-Laws website.

# Appendices

# Appendix A: How to prepare an occupational health and safety policy

A policy statement by the employer is an effective way to communicate the organization's commitment to worker health and safety. Senior management attitudes, relationships between employers and workers, community interests and technology all combine to play a part in determining how health and safety are viewed and addressed in the workplace.

Workplaces with exceptional health and safety records have established a clear line of responsibility for correcting health and safety concerns. This action enhances working relationships between employers and workers.

Under the *Occupational Health and Safety Act*, an employer must prepare and review at least annually a written occupational health and safety policy, and must develop and maintain a program to implement that policy [clause 25(2)(j)].

A clear, concise policy statement should reflect management's commitment, support and attitude to the health and safety program for the protection of workers. This statement should be signed by the employer and the highest level of management at the workplace, thus indicating employer and senior management commitment.

An example of a health and safety policy follows:

## Health and safety policy

The employer and senior management of **[insert name of business]** are vitally interested in the health and safety of its workers. Protection of workers from injury or occupational disease is a major continuing objective.

**[insert name of business]** will make every effort to provide a safe, healthy work environment. All employers, supervisors and workers must be dedicated to the continuing objective of reducing risk of injury.

**[insert name of business]**, as employer, is ultimately responsible for worker health and safety. As president **[or owner/operator, chairperson, chief executive officer, etc.,]** of **[insert name of business]**, I give you my personal commitment that I will comply with my duties under the Act, such as taking every reasonable precaution for the protection of workers in the workplace.

Supervisors will be held accountable for the health and safety of workers under their supervision. Supervisors are subject to various duties in the workplace, including the duty to ensure that machinery and equipment are safe and that workers work in compliance with established safe work practices and procedures.

Every worker must protect his or her own health and safety by working in compliance with the law and with safe work practices and procedures established by the employer. Workers will receive information, training and competent supervision in their specific work tasks to protect their health and safety.

It is in the best interest of all parties to consider health and safety in every activity. Commitment to health and safety must form an integral part of this organization, from the president to the workers.

Signed: **[name]**

**Note:** A workplace violence policy and a workplace harassment policy are required of all workplaces covered by Ontario's *Occupational Health and Safety Act*. Sample policies are available in the Ministry of Labour, Training and Skills Development's Understand the law on workplace violence and harassment, available from ServiceOntario publications and on the Ministry of Labour, Training and Skills Development internet website.

In addition to preparing a health and safety policy like the one above, the employer must also have a program in place to implement that policy. This program will vary, depending upon the hazards encountered in a particular workplace. Program elements may include all or some of the following:

1. Worker training (e.g., new workers, WHMIS, new job procedures)
2. Workplace inspections and hazard analysis
3. Analysis of the accidents and illnesses occurring at the workplace
4. A health and safety budget
5. A formal means of communication to address promptly the concerns of workers
6. Confined space entry procedure
7. Lock out procedure
8. Machine guarding
9. Material handling practices and procedures
10. Maintenance and repairs
11. Housekeeping
12. Protective equipment
13. Emergency procedures
14. First aid and rescue procedures
15. Electrical safety
16. Fire prevention
17. Engineering controls (e.g., ventilation)

Please note that this is not a comprehensive list of program elements.

# Appendix B: Ministry of Labour, Training and Skills Development occupational health and safety contact information and resources

## Occupational health and safety

If there is an emergency occurring in your workplace, call 911 immediately.

To report critical injuries, fatalities, work refusals, health and safety complaints, or suspected unsafe work practices:

- Contact the Ministry of Labour, Training and Skills Development Health & Safety Contact Centre any time at 1-877-202-0008 (toll-free).

Note that general inquiries about workplace health and safety are responded to from 8:30 a.m. – 5:00 p.m., Monday – Friday.

### Health and safety resources

- Health & Safety Ontario
- Infrastructure Health & Safety Association
- Public Service Health & Safety Association
- Workplace Safety & Prevention Services
- Workplace Safety North
- Workers Health & Safety Centre
- Occupational Health Clinics for Ontario Workers

### Central Region – West and East

Central Region West includes York, Peel, Dufferin and Simcoe

Central Region East includes Toronto and Durham

### Western Region

Western Region includes the following counties: Brant, Bruce, Elgin, Essex, Grey, Haldimand-Norfolk, Halton, Hamilton-Wentworth, Huron, Kent, Lambton, Middlesex, Niagara, Oxford, Perth, Waterloo and Wellington

### Northern Region

Northern Region includes the following counties: Algoma, Cochrane, Kenora, Manitoulin, Nipissing, Parry Sound, Rainy River, Sudbury, Thunder Bay and Timiskaming

### Eastern Region

Eastern Region includes the following counties: Frontenac, Haliburton, Hastings, Lanark, Leeds & Grenville, Lennox & Addington, Muskoka, Northumberland, Ottawa-Carleton, Peterborough, Prescott & Russell, Prince Edward, Renfrew, Stormont Dundas & Glengarry and Victoria

### Employment standards

All calls relating to employment standards (i.e., hours or work, overtime, public holidays, vacation, leaves of absence, termination, etc.) should be directed to:

- Employment Standards Information Centre
- GTA: 416-326-7160
- Canada-wide: 1-800-531-5551
- TTY: 1-866-567-8893

## Appendix C: Information resources about reprisals

### Ontario Ministry of Labour, Training and Skills Development

The Ontario Ministry of Labour, Training and Skills Development sets, communicates and enforces workplace standards related to occupational health and safety, employment rights and responsibilities, and labour relations. When workers allege that their employer has penalized them for exercising their rights and responsibilities under the *Occupational Health and Safety Act* (OHSA), inspectors

- investigate the workers' occupational health and safety concerns, and

- if warranted, act to address the health and safety concerns.

If a worker has been fired, inspectors may — with the worker's consent — refer the worker's description of the alleged reprisal to the Ontario Labour Relations Board (OLRB) and provide copies of the referral to the employer, the trade union (if any), and to any other organization affected by the alleged reprisal.

Health & Safety Contact Centre
1-877-202-0008 (toll-free)

## The Ontario Labour Relations Board

The Ontario Labour Relations Board (OLRB) is an independent, quasi-judicial tribunal that mediates and adjudicates employment and labour relations matters under Ontario statutes. Workers who believe their employer has penalized them because they have exercised their rights and responsibilities under the OHSA can file a complaint with the OLRB. There is no fee for this. Unions may file a grievance on behalf of members under the collective agreement or help member workers complain directly to the OLRB.

- 416-326-7500 or 1-877-339-3335 (toll-free)

## Workers

### Office of the Worker Adviser

The Office of the Worker Adviser (OWA) is an independent agency of the Ontario Ministry of Labour, Training and Skills Development. The OWA provides free advice and assistance to non-union workers who have experienced reprisal under the OHSA. OWA staff can file applications to the OLRB and provide representation to workers at mediations and hearings.

- 416-212-5335 or 1-855-659-7744 (toll-free)

### Toronto Workers' Health & Safety Legal Clinic

The Toronto Workers' Health & Safety Legal Clinic provides free information, legal advice and representation to low-income workers who face health and safety problems at work, including those who have been penalized for raising health and safety concerns.

- 416-971-8832

## Employers

### Office of the Employer Adviser

The Office of the Employer Adviser (OEA) is an independent agency of the Ontario Ministry of Labour, Training and Skills Development. The OEA provides free education, advice and representation to employers with fewer than 50 employees in responding to allegations of reprisal brought to the OLRB.

- 416-327-0020 or 1-800-387-0774 (toll-free)

### Law Society of Upper Canada

The Law Society of Upper Canada has several services for finding professional legal help. The society can refer callers to a lawyer who may provide a free initial consultation.

- 416-947-3330 or 1-800-668-7380 (toll-free)

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# Footnotes

- [1] ^ The *Occupational Health and Safety Act* is amended from time to time.

REPLACE THIS PAGE WITH

TAB PAGE

Ontario

# Guide for health and safety committees and representatives

Use this guide to establish strong roles and clear procedures to support health and safety in your workplace.

## Information in Spanish

- Guía de la Ley de Salud y Seguridad Ocupacional para Explotaciones Agropecuarias (Spanish PDF) (https://files.ontario.ca/jhsc_guide_spanish.pdf)

## Foreword

This document does not constitute legal advice. To determine your rights and obligations under the *Occupational Health and Safety Act* (https://www.ontario.ca/laws/statute/90o01) (OHSA or the Act) and its regulations, please contact your legal counsel or refer to the legislation.

Please note that throughout this Guide, the word “employer” generally includes “constructor”. In some cases, “constructor” has been left out to make the Guide easier to read.

This **guide does not replace** the *Occupational Health and Safety Act* (OHSA) and its regulations, and **should not be used as or considered legal advice**. Health and safety inspectors apply the law based on the facts in the workplace.

## Introduction

We all share the goal of making Ontario’s workplaces safe and healthy.

The *Occupational Health and Safety Act* provides us with the legal framework and the tools to achieve this goal. It sets out the rights and duties of all parties in the workplace. It establishes procedures for dealing with workplace hazards, and it provides for enforcement of the law where compliance has not been achieved voluntarily.

Changes to the Act in 1990 and subsequent years continued the evolution of occupational health and safety legislation in Ontario since the Act came into force in 1979. These changes reinforce the Internal Responsibility System (IRS) and the workplace structures, in particular the joint health and safety committees that have proven to be effective in establishing a strong IRS and health and safety culture in the workplace.

Employers should note that the Act makes it clear that the employers have the greatest responsibilities with respect to health and safety in the workplace. However all workplace parties have a role to play to ensure that health and safety requirements are met in the workplace. All workplace parties have a responsibility for promoting health and safety in the workplace and a role to play to help the workplace be in compliance with the statutory requirements set out under the Act. The respective roles and responsibilities for all workplace parties are detailed in the Act. This is the basis for the Internal Responsibility System.

Every improvement in occupational health and safety benefits all of us. Through cooperation and commitment, we can make Ontario a safer and healthier place in which to work.

It’s worth working for.

# Joint health and safety committees

## About joint health and safety committees

### What is a joint health and safety committee?

A joint health and safety committee (JHSC) is composed of worker and employer representatives. Together, they should be mutually committed to improving health and safety conditions in the workplace. Committees identify potential health and safety issues and bring them to the employer's attention and must be kept informed of health and safety developments in the workplace by the employer. As well, a designated worker member of the committee inspects the workplace at least once a month.

### What is the joint health and safety committee's role?

The committee is an advisory body that helps to stimulate or raise awareness of health and safety issues in the workplace, recognizes and identifies workplace risks and develops recommendations for the employer to address these risks. To achieve its goal, the committee holds regular meetings and conducts regular workplace inspections and makes written recommendations to the employer for the improvement of the health and safety of workers.

### Why are joint health and safety committees important?

Joint health and safety committees assist in providing greater protection against workplace injury and illness and deaths. Joint health and safety committees involve representatives from workers and employers. This co-operative involvement ensures that everything possible is done to identify and eliminate or mitigate workplace health and safety hazards.

Joint health and safety committees are a key element of a well-functioning workplace internal responsibility system.

### Which workplaces must have joint health and safety committees?

| No. of Workers | Legislative requirement |
|---|---|
| **1 to 5** | You are not required to have a JHSC or a health and safety representative unless a designated substance regulation applies to your workplace. |
| **6 to 19** | You are required to have one health and safety representative who is selected by the workers they represent. If a designated substance regulation applies to your workplace, you are required to have a JHSC. |
| **20 to 49** | You are required to have a JHSC. The committee must have at least two (2) members. |
| **50 plus** | You are required to have a JHSC. The committee must have at least four (4) members. |

Workplaces that require committees include:

- any workplace that regularly employs 20 or more workers [clause 9(2)(a)]. Note that workers taking part in community participation (workfare) under the *Ontario Works Act, 1997 (https://www.ontario.ca/laws/statute/97o25a)* are not counted for the purpose of determining whether there are 20 or more workers regularly employed
- construction projects on which 20 or more workers are regularly employed and expected to last three months or more [clauses 9(2)(a) and 9(1)(a)]
- any workplace (other than specified construction projects) to which a designated substances regulation applies, even if there are fewer than 20 workers regularly employed in the workplace [clause 9(2)(c)]
- any workplace where a Director's order has been issued under section 33 of the Act, even if there are fewer than 20 workers regularly employed in the workplace [clause 9(2)(b)]

- any workplace or construction project in respect of which the Minister of Labour has ordered the employer or constructor to establish a committee [subsection 9(3)]
- farming operations at which 20 or more workers are regularly employed and have duties related to mushroom, greenhouse, dairy, hog, cattle or poultry farming. Detailed information is available in the Ministry of Labour, Training and Skills Development's Health and Safety Committees and Representatives in Farming (https://www.ontario.ca/page/health-and-safety-committees-and-representatives-farming) .

The Minister of Labour may also permit a single committee to be established for more than one workplace [subsections 9(3.1) and 9(5)]. These committees are commonly referred to as "multi-workplace committees." For more information on multi-workplace committees, please see the section of this guide entitled Multi-workplace Joint Health and Safety Committees or contact a local Ministry of Labour, Training and Skills Development office nearest your workplace.

**How many members must a joint health and safety committee have?**

In workplaces in which fewer than 50 workers are regularly employed, the Act requires the committee to have a minimum of two (2) members [clause 9(6)(a)]. Where there are 50 or more workers regularly employed, the committee must have at least four (4) members or any other number prescribed in regulation [clause 9(6)(b)]. At least half the members must be workers employed at the workplace who do not exercise managerial functions [subsection 9(7)]. The employer or constructor is required to select the remaining members from persons who exercise managerial functions for the employer/constructor [subsection 9(9)].

The Ministry recommends that joint health and safety committees be representative of the entire workplace. For example, if a workplace has a plant, office, laboratory and warehouse, the committee should include representatives from each of these areas.

**What about workplaces with fewer than 20 workers?**

Unless they are subject to a designated substances regulation or the subject of a Director's or Minister's order, workplaces with fewer than 20 regularly employed workers are not required to have a joint health and safety committee.

In workplaces where the number of workers regularly exceeds five but no JHSC is required (e.g., because there are fewer than 20 workers) the workers must select, from among themselves, one person to be a **health and safety representative** [subsection 8(1)].

Unless they are subject to a designated substances regulation or a Director's or Minister's order, workplaces with five or fewer regularly employed workers are not required to have either a committee or a health and safety representative.

**What is a worker trades committee? When is one required?**

Where a joint health and safety committee is required at a construction project (other than those which are expected to last less than three months and or at which fewer than 50 workers are regularly employed) the committee must establish a worker trades committee [subsection 10(1)].

Members of the worker trades committee must represent workers employed in each of the trades at the project [subsection 10(2)]. These members must be selected by workers employed in the trades they represent or, if a trade union represents workers, by the union [subsection 10(3)].

The committee's primary responsibility is to inform the joint health and safety committee of any health and safety concerns that workers employed in the trades at the workplace might have [subsection 10(4)].

**When is a joint health and safety committee required on a farming operation?**

A joint health and safety committee is required on a farming operation if there are 20 or more workers who are regularly employed in the workplace and have duties related to one or more of the following operations:

- Mushroom farming
- Greenhouse farming
- Dairy farming
- Hog farming
- Cattle farming
- Poultry farming.

[Subsection 9(2) of the Act and subsections 3(1) and 3(2) of Regulation, O. Reg. 414/05: Farming Operations (https://www.ontario.ca/laws/regulation/050414) .]

More detailed information is available in the Ministry of Labour, Training and Skills Development's Health and safety committees and representatives in farming (https://www.ontario.ca/page/guide-health-and-safety-committees-and-representatives) .

**Who is considered "regularly employed" for the purpose of determining whether a joint health and safety committee is required at a workplace?**

Although this is a fact-specific determination which may vary by workplace, the Ministry typically considers a worker who is filling a position at the client's workplace as "regularly employed" if the position exceeds (or is expected to exceed) three months.

There may be situations where there is a high turnover of staff in a particular position, with each person working in it for less than three months. If the term of the position exceeds three months, the Ministry recommends that the position should be included in the "regularly employed" count when determining whether a health and safety representative or joint health and safety committee is required, even though no single worker may have occupied that position for more than three months.

## Members

**How are committee members selected?**

At least half the committee members must be worker members, (specifically workers who do not exercise managerial functions) at the workplace, who are selected by the workers. In a unionized workplace, the worker members must be chosen by the trade union or unions [subsections 9(7) and 9(8)].

The employer or constructor chooses the remaining members from persons in the workplace who exercise managerial functions [subsection 9(9)]. It is recommended that the employer select members by giving consideration to their knowledge of operations and health and safety processes and procedures in the workplace.

**Must the names of the JHSC members be posted in the workplace?**

The names and work locations of the members shall be posted in the workplace by the employer or constructor[subsections 9(32)].

**Do committee members need special training or certification?**

Unless otherwise prescribed in regulation, the Act requires that at least two members of the committee (one representing workers and one representing persons who exercise managerial functions) be certified. Until April 1, 2012 the Workplace Safety and Insurance Board was authorized to certify committee members under the *Workplace Safety and Insurance Act, 1997 (https://www.ontario.ca/laws/statute/97w16)* (WSIA). As of April 1, 2012, the Ministry of Labour, Training and Skills Development's Chief Prevention Officer has been authorized to certify members under the *Occupational Health and Safety Act (https://www.ontario.ca/laws/statute/90o01)* (OHSA) [clause 7.6(1)(b)]. Any person who was certified under the WSIA before April 1, 2012 is deemed to be certified under the OHSA.

In order to be certified, a person must complete the Parts 1 and 2 of mandatory training: Basic Certification and Workplace-Specific Hazard Training. Refresher training is required every three (3) years to maintain certification. A certified member may request a one-time exemption from Refresher Training if he or she is an active member (i.e., engaged as a member of the workplace JHSC within the past twelve months).

**Part One, Basic Certification** provides an overall knowledge of health and safety that applies to all workplaces.

**Part Two, Workplace-Specific Hazard Training** focuses on significant hazards in the workplace. Employers are required to select a minimum of six (6) hazards relevant to the workplace. It covers RACE methodology (recognize, assess, control, and evaluate) on how to assess those hazards and ways to control and/or eliminate them.

Part One and Part Two training is available through Chief Prevention Officer approved training providers (https://www.labour.gov.on.ca/english/hs/cert_providers.php) .

Certified members are not required for committees at workplaces that regularly employ less than 20 workers, or at construction projects that regularly employ less than 50 workers [section 4 of O. Reg. 385/96], or for projects expected to last less than three months, see subsection 9(13).

Certified health and safety committee members play a key role on the committee. Specialized health and safety training for other members of the committee is available through health and safety associations. Although it is likely beneficial for all members of the committee to have health and safety training, it is not a requirement under the OHSA.

Visit the JHSC page (https://www.labour.gov.on.ca/english/hs/topics/certification.php) for more information on certification training.

**Is refresher training required in order to maintain certification?**

To maintain one's certification, a certified member must complete refresher training within three years of being certified, and every three years thereafter (with limited exceptions).

Refresher training includes a review of key concepts from Part One and Part Two training; relevant updates to legislation, standards, codes of practice, and occupational health and safety best practices; and, an opportunity for certified members to share and discuss best practices and challenges.

**Can more than two members of the committee be certified?**

Yes. The Act specifies the minimum number of members of the committee who must be certified. However, the employer may have more than two members of the committee certified.

If there is more than one certified member representing workers, the workers (or the union where applicable) must designate one or more certified members who then become solely entitled to exercise the rights and are required to perform the duties of a certified member representing workers [subsection 9(15)].

Similarly, if there is more than one certified member representing the employer, the employer must designate one or more of them who will then become solely entitled to exercise the rights and are required to perform the duties of a certified member representing the employer [subsection 9(16)].

**What if a certified member resigns or cannot serve on the committee?**

The OHSA does specifically address the issue of absent certified members. Under section 9(17) of the OHSA if a certified member resigns or is unable to act, the employer shall within a reasonable time, take all the steps necessary to ensure that the requirement to have at least one member of the committee representing the employer or constructor and at least one member representing the workers are certified [subsection 9(12)]

**How long is a committee member's term on the committee?**

The Act does not specify requirements relating to the terms of committee members. The Ministry of Labour, Training and Skills Development recommends a term of at least one year. Where there is more than one worker member and one employer member, terms should be staggered to allow continuity. Vacancies should be filled as quickly as possible.

### Do committee members get paid for their time?

A member of the committee is considered to be at work when performing specified activities relevant to his or her role and must be paid at either their regular rate or, where applicable (j.e., when duties take them beyond their usual hours of work), their premium rate of pay [subsection 9(35)].

Those activities for which a member of the committee must be paid are:

- performing inspections of the workplace [subsections 9(26) and (27)]
- investigating incidents where a worker is killed or critically injured at a workplace [the Act requires that a member of the committee be designated to perform this role, see subsection 9(31)]
- preparing for and attending meetings of the committee [clauses 9(34)(a) and (b)]
- becoming trained as a certified member of the committee, except in specified circumstances [subsection 9(36)].

### Are committee members entitled to paid preparation time?

As noted above, each member must be paid for one hour of preparation time before every committee meeting. If it becomes apparent that one hour is not sufficient, the committee can decide that more paid preparation time is required and the employer must remunerate the members accordingly [clause 9(34)(a)].

### Are committee members entitled to be paid when attending certification training?

A member who is participating in a training program to meet the requirements for becoming a certified member is considered to be at work. These members must be paid by the employer at either their regular rate or, where applicable, their premium rate of pay (unless they are paid to become certified by the Workplace Safety and Insurance Board (http://www.wsib.on.ca/WSIBPortal/faces/WSIBHomePage) ) [subsections 9(36) and 9(37)].

## Meetings

### How often must the joint health and safety committee meet?

Committee members are required to meet at the workplace at least once every three months [subsection 9(33)]. More frequent meetings may be useful particularly in industries where the work involves hazardous substances or procedures.

### Who chairs the meeting?

Committees must be co-chaired by two members. One of the co-chairs is chosen by the members who represent workers, the other by members who exercise managerial functions [subsection 9(11)]. It is recommended that the chairs alternate the chairing of each meeting.

### How is an agenda prepared?

Agendas for meetings should be prepared by the co-chairs and should be distributed one week in advance of the committee meeting. Agendas are important to the success of the meeting. Agendas ensure that:

1. Members know the date, time and place of the meeting.
2. Every item the committee considers will receive attention.
3. Business will not be side-tracked.

4. Deferred items or business outstanding will be carried forward.
5. Members will have the opportunity to study the items before the meeting.

Members who wish to have items added to the agenda should make such request to the co-chairs.

Effective communication and cooperation (e.g., cooperative problem solving) are crucial factors in a well-functioning JHSC. Members should be encouraged to share their knowledge and experience freely to resolve health and safety issues in the workplace. A sample meeting agenda template is found in Appendix A.

**How are committee members informed of upcoming meetings?**

Meeting dates should be established on a pre set schedule or at the conclusion of each committee meeting. This date should be recorded in the minutes of the meeting. A copy of the minutes should be distributed to members a few days after the meeting. The dates of upcoming meetings should also be recorded at the top of each agenda.

**Is a quorum needed to hold a meeting?**

The Act does not specify any requirements related to quorums for meetings of committees. As such, the committee can determine its own rules for a quorum at meetings as long as they are consistent with statutory requirements (e.g., members representing both workers and the employer are present). Ideally, both co-chairs should be present at every meeting.

**Must the minutes be recorded? What should the minutes include?**

Minutes of each meeting must be recorded and available for review by a Ministry of Labour, Training and Skills Development inspector [subsection 9(22)]. Minutes should contain details of all matters discussed, as well as a full description of issues raised, any action recommended by the committee members and the employer response to the recommendation(s). Minutes should identify members by title and not by name. Members' names should be used only for attendance purposes.

Minutes should be signed by the co-chairs and posted in the workplace within one week of the meeting. A sample template for meeting minutes is found in Appendix B.

**Are there other procedures a committee must follow?**

The committee may make its own rules and procedures provided that they are consistent with statutory requirements relating to committees. A template of a committee's terms of reference is found in Appendix C.

## Roles and responsibilities

**What are the committee's principal functions?**

The committee has various powers, including:

- identifying actual and potential hazards in the workplace
- obtaining information from the employer relating to health and safety in the workplace
- inspecting the workplace on a regular basis
- being consulted about and having a member representing workers be present at the beginning of any health and safety-related testing in the workplace
- recommending health and safety improvements in the workplace.

To carry out its functions, the committee is required to hold meetings at least once every three months [subsection 9(33)]. There may be a need to meet more often if there are specific workplace health and safety issues to address or if the work involves hazardous substances or procedures.

Joint health and safety committees may want to consider developing a terms of reference to help guide them towards their goals. A sample terms of reference is provided in Appendix C.

**What other functions does a committee have?**

Generally speaking all committee members should be available to receive worker concerns, complaints and recommendations; to discuss issues and recommend solutions; and to provide input into existing and proposed workplace health and safety programs. Some regulations under the Act also set out additional functions for a committee, such as requiring the employer to consult with the joint health and safety committee/health and safety representative in specified circumstances. One example is the Health Care and Residential Facilities Regulation (https://www.ontario.ca/laws/regulation/930067) , O. Reg. 67/93, which requires the employer to consult the committee or health and safety representative during the development of health and safety policies and programs, including training programs (see sections 8 and 9 of that Regulation).

Under O. Reg. 490/09 (Designated Substances (https://www.ontario.ca/laws/regulation/090490) ), the employers are required to consult with the committees in assessments of likely worker exposures to designated substances in the workplace, and the committees are entitled to make recommendations in respect of said assessments.

Other key functions are investigating when a worker is killed or critically injured 9(31) and being present in the investigations following a work refusal – see 43(4)(a) and (7).

**Who carries out workplace inspections?**

Worker committee members must select a worker member in their group to inspect the workplace [subsection 9(23)]. The Act requires that the selected member be a certified member if possible [subsection 9(24)]. Where a multi-workplace committee has been established by an order of the Minister of Labour, under subsection 9(3.1), the committee members may designate a worker who is not on the committee to perform inspections. Situations that may be a source of danger or hazard to workers must be reported to the committee [subsection 9(30)].

**How often must workplace inspections be carried out?**

Regular inspections of the workplace by the designated worker member of the joint health and safety committee help to identify hazards and thereby prevent or mitigate workplace injuries. The workplace must be inspected at least once a month, unless a different schedule of inspections is ordered by a Ministry of Labour, Training and Skills Development inspector or is prescribed in a regulation under the OHSA [subsection 9(26)]. Where it is not practical to inspect the workplace on a monthly basis (e.g., where the workplace is too large or where parts are shut down on a seasonal basis), the designated member is required to inspect the workplace at least once a year and ensure that at least part of the workplace is inspected each month [subsection 9(27)] in accordance with a schedule established by the committee [subsection 9(28)].

**After a source of danger or hazard is reported to the committee, what happens?**

If a source of danger is reported to the committee by a designated worker who carried out a workplace inspection, the committee or members of the committee are required to consider the information within a reasonable period of time. The committee would then typically make written recommendations to the employer or constructor to address the identified hazard(s). The Act requires that the employer provide a written response within 21 days, to any **written recommendations** from the committee. If the employer agrees with the recommendations, the response must include a timetable for implementation. If the employer disagrees with a recommendation, the response must give the reasons for disagreement [subsections 9(20) and 9(21)].

Although OHSA does not stipulate that the committee is supposed to work on a consensus basis it is highly recommended. However, there will be situations where a consensus may be not reached. If the committee has failed to reach a consensus about making recommendations to the employer after trying to reach a consensus in good faith to do so, either co-chair of the committee has the power to make written recommendations to the constructor or the employer [subsection 9(19.1)].

### Do certified members have added responsibilities?

Because certified members receive special training in workplace health and safety, they are given additional powers under the Act. For example, certified employer and worker representatives can, under specified circumstances, collectively order the employer or constructor to stop work that is dangerous to a worker [subsection 45(4)].

## Employer responsibilities

### What are the employer's responsibilities regarding joint health and safety committees?

Employers have a range of obligations in respect of joint health and safety committees. Examples of employer obligations relating to committees include:

- causing a JHSC to be established and maintained at a workplace where one is required [subsection 9(4)]
- selecting committee members who exercise managerial functions for the employer to sit on the joint health and safety committee [subsection 9(9)]
- assisting and cooperating with committee members in the carrying out of their functions [clause 25(2)(e)]
- providing the committee with information relating to hazards in the workplace and any work practices and standards in similar industries [clause 9(18)(d)]
- providing the committee with a copy of all orders or reports issued to the employer by a Ministry of Labour, Training and Skills Development inspector [subsection 57(10)] informing the committee of any work related incidents involving injury, death or occupational illness [sections 51 and 52] (see Section VII (https://www.labour.gov.on.ca/english/hs/pubs/ohsa/ohsag_part7.php) of the Guide to the *Occupational Health and Safety Act*).
- consulting with the JHSC or health and safety representative on the development of health and safety programs and policies (including training programs), where prescribed, and,
- provide a joint health and safety committee member representing the workers with the opportunity to accompany a Ministry of Labour, Training and Skills Development inspector on the physical inspection of the workplace [subsection 54(3)].

It is an offence for any person, including an employer, to knowingly hinder or interfere with, or to give false information to, the joint health and safety committee or to a committee member who is in the process of performing his or her duties under the Act. See also the section in this Guide entitled Multi-workplace Joint Health and Safety Committees.

### Must an employer act on committee recommendations?

An employer who receives written recommendations from the committee must provide a written response to the committee within 21 calendar days [subsection 9(20)]. If the recommendations are accepted, a timetable for action must be outlined and provided to the committee. If an employer decides against acting on all or some of the committee's recommendations, reasons must be given in writing [subsection 9(21)].

## General procedures

A worker must report any hazard or contravention of the Act to the employer or supervisor [clauses 28(1)(c) and 28(1)(d)]. As a best-practice it may also be advisable to alert the JHSC that the matter has been presented to the employer. If the matter is not resolved to the worker's satisfaction, a worker should then formally inform the committee. The committee has the power to make recommendations to the employer in respect of the identified hazard.

### What if the committee cannot reach a consensus on a recommendation?

If the committee has failed to reach a consensus about making recommendations after trying to reach a consensus in good faith, either co-chair of the committee has the power to make written recommendations to the constructor or the employer.

In these instances, written recommendations may include the following:

1. A summary of the position of the members of the committee who supported the recommendations.
2. A summary of the position of the members of the committee who did not support the recommendations.
3. Information about how the committee attempted to reach consensus.

**What should the committee do in the event of a work refusal?**

A committee member, who represents workers, must be present during the employer or supervisor's investigation of a work refusal [subsection 43(4)]. This investigation is typically conducted by the supervisor.

If the issue is not resolved following the employer's investigation under subsection 43(4), the employer, a worker or other person on behalf of the employer or worker must notify a Ministry of Labour, Training and Skills Development inspector [subsection 43(6)]. The inspector is required to investigate the work refusal in in consultation with specified persons, including the committee member where applicable [subsection 43(7)].

See also the *Guide to the Occupational Health and Safety Act: (https://www.labour.gov.on.ca/english/hs/pubs/ohsa/ohsag_part5.php)* Part V (https://www.labour.gov.on.ca/english/hs/pubs/ohsa/ohsag_part5.php) .

**What should the committee do in the event of a worker's critical injury or death?**

Members of the committee, who represent workers, must designate one or more worker members to investigate incidents in which a worker is killed or critically injured [subsection 9(31)].

The designated member(s) have the right to inspect the place where the incident occurred as well as any relevant machine, device or thing, but must not disturb the scene pending a Ministry of Labour, Training and Skills Development investigation.

Following the investigation, all findings must be reported to the committee and to a Director [subsection 9(31)]. Where appropriate, the committee may wish to make specific recommendations to the employer in respect of the hazard which led to the injury or fatality.

**Note:** A person is "critically injured" for the purposes of the Act if he or she has an injury of a serious nature that places life in jeopardy, produces unconsciousness, results in substantial loss of blood, involves the fracture of a leg or arm but not a finger or toe, involves the amputation of a leg, arm, hand or foot but not a finger or toe, consists of burns to a major portion of the body, or causes the loss of sight in an eye (R.R.O. 1990, Regulation 834 – Critical Injury Defined (https://www.ontario.ca/laws/regulation/900834) ).

**What sort of information can the joint health and safety committee expect to obtain?**

The JHSC has various powers relating to the collection of health and safety-related information. For example: the JHSC has the power to obtain information from the employer about health and safety related testing and any actual or potential hazards in the workplace [clause 9(18)(e)]. The employer must share any knowledge of health and safety practices, tests and standards in the industry [clause 9(18)(d)]. The employer is further obligated to provide the joint health and safety committee with health and safety reports under clause 25(2)(l).

Where a person is killed or critically injured from any cause at a workplace the employer must immediately notify the Ministry and the JHSC [section 51].

The employer must notify the JHSC of lost time injuries caused by accident, explosion, fire or incident of workplace violence at the workplace, and must report any occupational illnesses of which he or she has knowledge [section 52].

The employer may also be required to provide other specific information to the JHSC where prescribed. Therefore, as stated previously, it is important that the employer and the JHSC be familiar with the regulations that apply to their workplace.

The Workplace Safety and Insurance Board, at the request of the joint health and safety committee, is required to send an annual summary of data relating to the number of fatalities, lost workday cases, workdays lost, non-fatal cases requiring medical care (but not involving lost workdays) and incidence of occupational illnesses [section 12].

#### What assistance can the joint health and safety committee expect from the employer?

The Act places a general duty on an employer to assist and cooperate with the joint health and safety committee in the performance of its functions [clause 25(2)(e)].

More specific employer responsibilities with respect to the joint health and safety committee include:

- upon the request of the joint health and safety committee, provide information regarding the identification of potential or existing hazards involving materials, processes or equipment [paragraph 9(18)(d)(i)]
- upon request provide the committee with information about health and safety experience and work practices and standards in similar or other industries of which the constructor or employer has knowledge [paragraph 9(18)(d)(ii)]
- provide the joint health and safety committee with a copy of all orders or reports issued to the employer by an inspector of the Ministry of Labour, Training and Skills Development [subsection 57(10)(a)]
- provide a joint health and safety committee member with the opportunity to accompany a Ministry of Labour, Training and Skills Development inspector on the physical inspection of the workplace [subsection 54(3)]
- provide a joint health and safety committee with information and assistance the committee requires for the purposes of inspecting the workplace [subsection 9(29)]
- advise the committee of the results of the assessment or reassessment of the risks of workplace violence, and provide it with a copy of the assessment if it is in writing [subsection 32.0.(3)(a)], and
- Provide any other specific information where prescribed.

It is an offence for any person to knowingly hinder or interfere with, or to give false information to a joint health and safety committee member who is in the process of exercising his or her powers and/or performing his or her duties under the Act.

# Health and safety representatives

## About Health and Safety Representatives

#### What is a health and safety representative?

In workplaces, including construction projects, at which the number of workers regularly exceeds five and at which no joint health and safety committee is required, employers or constructors must ensure that workers select a health and safety representative [subsection 8(1)]. Like joint health and safety committee members, the representative should be committed to improving health and safety conditions in the workplace.

The health and safety representative is selected by workers at the workplace who do not exercise managerial functions or by the union where the workplace is unionized [subsection 8(5)]. At the present time, the Act does not require that the representative be specifically trained. However, there have been amendments to the *Occupational Health and Safety Act (https://www.ontario.ca/laws/statute/90o01)* (OHSA), which relate to training requirements for health and safety representatives, but which have not yet been put into effect. When these amendments do come into effect, they will require that, unless otherwise prescribed, the employer or constructor ensure that the representative receives training that enables him or her to effectively exercise the powers and perform the duties of a health and safety representative [subsection 8(5.1)].

#### When is a worker health and safety representative required on a farming operation?

A worker health and safety representative is required on all farming operations at which the number of workers regularly exceeds five, and at which no health and safety committee is required. More detailed information is

available in the Ministry of Labour, Training and Skills Development's Health and safety committees and representatives in farming (https://www.labour.gov.on.ca/english/hs/pubs/farming/ohsa/index.php) .

**Is a health and safety representative entitled to get paid for their time?**

A health and safety representative is entitled to take time from work as is necessary to carry out his or her duties to carry out monthly inspections of the workplace and inspect the place where a person is killed or critically injured at a workplace.

A health and safety representative must be paid at either their regular rate or, where applicable, their premium rate of pay when absent from work for the purposes of carrying out his or her duties under the Act [subsection 8(15)].

## Roles and responsibilities

**Does a health and safety representative have different responsibilities from a joint health and safety committee member?**

Generally speaking, a health and safety representative has the same responsibilities and powers as a joint health and safety committee member. These include:

- identifying actual and potential workplace hazards [subsection 8(10)]
- inspecting the workplace at least once a month [subsection 8(6)] or, if that is not practical, inspecting the workplace at least once a year and at least part of the workplace each month [subsection 8(7)] in accordance with a schedule agreed upon by the representative and the employer (constructor) [subsection 8(8)]
- being consulted about and being present at the beginning of health and safety-related testing in the workplace [subsection 8(11)]
- making recommendations to the employer [subsection 8(10)] about health and safety in the workplace, and
- participating in the first and second stage investigation of work refusals [subsections 43(4) and (7)] and inspecting workplaces when there are critical injuries or fatalities [subsection 8(14)].

## General procedures

A worker must report any hazard or contravention of the Act to the employer or supervisor [clauses 28(1)(c) and 28(1)(d)]. As a best-practice it may also be advisable to alert the health and safety representative that the matter has been presented to the employer If the matter is not resolved to the worker's satisfaction, a worker may choose to inform the health and safety representative about the identified hazard or contravention.

**What should the health and safety representative do in the event of a work refusal?**

The health and safety representative must be present during the **employer or supervisor's** investigation of a work refusal [subsection 43(4)]. This investigation is typically conducted by the supervisor.

If the issue is not resolved, the employer, the worker, or a representative of one of them, must notify a Ministry inspector [subsection 43(6)]. The health and safety representative must be consulted by the inspector who conducts the investigation [subsection 43(7)].

The inspector is required to investigate the work refusal in consultation with specified persons, including the health and safety representative where applicable [subsection 43(7)].

See also the *Guide to the Occupational Health and Safety Act: Part VI (https://www.labour.gov.on.ca/english/hs/pubs/ohsa/ohsag_part6.php)* .

**What should the health and safety representative do in the event of a critical injury or death?**

The health and safety representative has the power to inspect the place where the incident occurred as well as any relevant machine, device or thing and shall report his or her findings in writing to the Ministry of Labour, Training and Skills Development [subsection 8(14)].

Where appropriate, the health and safety representative may wish to make specific recommendations to the employer in respect of the hazard which led to the injury or fatality [subsection 8(10)].

**Note**: A person is "critically injured" for the purposes of the Act if he or she has an injury of a serious nature that places life in jeopardy, produces unconsciousness, results in substantial loss of blood, involves the fracture of a leg or arm but not a finger or toe, involves the amputation of a leg, arm, hand or foot but not a finger or toe, consists of burns to a major portion of the body, or causes the loss of sight in an eye (Regulation 834)

**What sort of information can the health and safety representative expect to obtain?**

The health and safety representative has various powers relating to the collection of health and safety-related information. For example: the health and safety representative has the power to obtain information from the employer about health and safety related testing and any actual or potential hazards in the workplace [subsection 8(11)]. The employer must share any knowledge of health and safety practices, tests and standards in the industry [clauses 8(11)(a),(b), and (c)] The employer is further obligated to provide the health and safety representative with health and safety reports under clause 25(2)(l)].

Where a person is killed or critically injured from any cause at a workplace the employer must immediately notify the Ministry and the health and safety representative [section 51].

The employer must notify the health and safety representative of lost time injuries caused by accident, explosion, fire or incident of workplace violence at the workplace, and must report any occupational illnesses of which he or she has knowledge [section 52].

The employer may also be required to provide other specific information to the health and safety representative where prescribed. Therefore, as stated previously, it is important that the employer and the health and safety representative be familiar with the regulations that apply to their workplace.

The Workplace Safety and Insurance Board (http://www.wsib.on.ca/WSIBPortal/faces/WSIBArticlePage?fGUID=83550210063500036 7&_afrLoop=1908513133283475&_afrWindowMode=0&_afrWindowId=sn30legjs_101), at the request of the health and safety representative, is required to send an annual summary of data relating to the number of fatalities, lost workday cases, workdays lost, non fatal cases requiring medical care (but not involving lost workdays) and incidence of occupational illnesses [section 12].

**What assistance can the health and safety representative expect from the employer?**

The Act places a general duty on an employer to assist and cooperate with the health and safety representative in the performance of his or her functions [clause 25(2)(e)].

More specific employer responsibilities with respect to the health and safety representative include:

- upon the request of the health and safety representative, provide information regarding the identification of potential or existing hazards involving materials, processes or equipment [paragraph 8(11)(c)(i)]
- provide the health and safety representative with a copy of all orders or reports issued to the employer by an inspector of the Ministry of Labour, Training and Skills Development [subsection 57(10)]
- provide a health and safety representative with the opportunity to accompany a Ministry of Labour, Training and Skills Development inspector on the physical inspection of the workplace [subsection 54(3)]
- provide a health and safety representative with information and assistance the representative requires for the purposes of inspecting the workplace [subsection 8(9)]
- provide the information to the health and safety representative as required under any applicable designated substances regulation
- advise the health and safety representative of the results of the assessment or reassessment of the risks of workplace violence, and provide him or her with a copy of the assessment if it is in writing [subsections

32.0.3(3) and (4)], and
- provide any other specific information where prescribed.

It is an offence for any person to knowingly hinder or interfere with, or to give false information to a health and safety representative who is in the process of exercising his or her powers and/or performing his or her duties under the Act.

# Multi-workplace joint health and safety committees

## About multi-workplace joint health and safety committees

### What is a multi-workplace joint health and safety committee?

A multi-workplace joint health and safety committee (JHSC) is a single joint health and safety committee, established and maintained for more than one workplace, each of which would normally require its own committee. Generally, this arrangement must be approved by order of the Minister (or his or her delegate) under subsection 9(3.1) of the *Occupational Health and Safety Act (https://www.ontario.ca/laws/statute/90o01)* (OHSA). The Minister's authority to permit a multi-workplace joint health and safety committee is currently delegated to the Regional Directors of the ministry. When approving a multi-workplace JHSC, the Minister (or Regional Director) may specify what the composition, practice and procedure of the JHSC will be – which may differ from and replace the usual OHSA requirements.

### Examples

- A city establishes a multi-workplace JHSC that represents separate work locations by a particular department in a large municipal government (e.g., multi-workplace JHSC covering parks and recreational facilities).
- A multi-workplace JHSC for workers belonging to the same union, working in separate schools for the same employer (e.g., unionised non-teaching staff in schools within the same school board). (Multi-workplace JHSCs in the education sector for teachers can be unique. See Appendix B of Multi-workplace Joint Health and Safety Committee Guidance (https://www.labour.gov.on.ca/english/hs/pubs/jhsc_multiwork/appendix_b.php) for more details).

### How many members is a multi-workplace JHSC required to have?

Subsection 9(6) of the OHSA sets out minimum requirements for the composition of a JHSC – at least two members if the workplace has fewer than 50 workers, and at least four members if there are 50 or more workers. At least half the members of the JHSC must be workers employed at the workplace who do not exercise managerial duties and/or functions.

In practice, most Minister's orders made under subsection 9(3.1) require the committee to have more than the minimum number of worker and employer members to ensure that the committee can effectively exercise its powers and functions.

### How many certified members is a multi-workplace JHSC required to have?

Subsection 9(12) of the OHSA requires an employer/constructor to ensure that a JHSC has at least two certified members, one representing the employer/constructor and one representing workers.

When exercising his/her discretion to determine the composition of a multi-workplace JHSC, the Minister (or Regional Director) may decide that more than two certified members are needed to ensure they can effectively exercise their powers and fulfil their roles on the committee.

The size and location of workplaces served by the committee will be considered. In practice, most Minister's orders made under subsection 9(3.1) provide for more than the minimum number of certified members on a multi-workplace JHSC.

**What is a "designated worker" for the purposes of a multi-workplace JHSC?**

In an order issued under subsection 9(3.1) of the OHSA, the Minister (or Regional Director) may specify that the members of a multi-workplace JHSC who represent workers may designate a worker who is not a member of the committee, at any of the workplaces served by the committee, to do the following:

- inspect the physical condition of the workplace (subsection 9(23)), and
- participate in the investigation of a work refusal, by exercising the rights and responsibilities that a committee member would normally have under clause 43(4)(a), and subsections (7), (11) and (12).

The worker members of a multi-workplace JHSC do not give up or lose their powers to carry out the above duties if they designate a worker under subsection 9(3.2).

A worker does not become a member of the multi-workplace JHSC as a result of being designated. However, he or she must comply with section 9 of the OHSA as if he or she is a member of the committee, and certain corresponding rights and entitlements of committee members also apply to a 'designated worker'.

**What training must an employer provide to a worker designated under clause 9(3.2)(a) of the OHSA?**

If an order under subsection 9(3.1) provides that the multi-workplace JHSC may designate a worker, the order may also specify that the employer must provide training to the designated worker to enable the worker to adequately perform the tasks that the worker members of the committee may have delegated to him or her, which are limited to performing workplace inspections and exercising a committee member's rights and responsibilities with respect to work refusals.

## Multi-workplace JHSC functions

**How do the responsibilities and duties of multi-workplace JHSC members differ from regular JHSC members?**

The responsibilities and duties set out in the OHSA apply equally to multi-workplace JHSC members, with the understanding that any reference to "workplace" refers to each of the individual workplaces covered by the multi-workplace JHSC agreement.

**What is the "workplace" with respect to required frequency of JHSC inspections for workplaces with a multi-workplace committee?**

Each workplace covered by the multi-workplace JHSC is considered "the workplace" for the purposes of inspection frequency. The existence of a multi-workplace JHSC does not convert multiple workplaces into a single workplace. Inspection frequency is mandated by subsections 9(26) and 9(27) of the OHSA, which require that the workplace be inspected at least once a month and, if that is not practical, the entire workplace must be inspected at least once a year with at least part of the workplace inspected each month.

**Can a multi-workplace JHSC use video conferencing or other technology to help carry out its functions?**

Video-conferencing may be an effective way for members of a multi-workplace JHSC to communicate with one another, with other workplace parties, and to reduce some travel costs. It may be a reasonable option for carrying out regular committee meetings. It will be up to the workplace parties to demonstrate that the use of video conferencing or other technology meets the requirements set out in the Terms of Reference.

For more information related to multi-workplace joint health and safety committees please see the Multi-workplace Joint Health and Safety Committee Guidance (https://www.labour.gov.on.ca/english/hs/pubs/jhsc_multiwork/index.php)

# Appendix A: Sample templates for joint health and safety committee agenda

## [Name] Joint health and safety committee

**Agenda**

**Date:**

**Time:**

**Location:**

**1. Review of agenda and minutes of previous meeting**

**2. Old business**

a. List action items from previous minutes
b. List any approvals and/or responses from Management

**3. Incident summary**

**4. Monthly reports from worker members**

a. Inspections
b. Audits

**5. Policy or program updates**

a. Policy review and/or update
b. New health and safety programs (e.g., new Risk Management Manual additions, new designated substance assessments or control programs)

**6. New business**

a. New items/issues
b. Ministry of Labour, Training and Skills Development visits (if any)
c. Policies or programs

**7. Annual reviews**

a. Terms of reference (date)
b. Statistics summary (date)
c. Training (date)
d. Committee membership (date)
e. Designated substances (date)

**8. Other business**

Contacts:

Worker co-chair:

Management co-chair:

Minutes prepared by:

# Appendix B:
# Sample template for joint health and safety committee minutes

## [Name] Joint health and safety committee

- List date, time and location of meeting

**Information about each JHSC members:**

- Name
- Work location of member (department, building, room)
- Present or absent for meeting?
- Member category:
    - worker/non-management – if unionized, record name of union)
    - management
- Is member certified?
- Work location (department, building, room)

**Information about Guests (if any):**

- Name and Title
- Department/trade

**Minutes of previous meeting:**

(Include a statement to indicate minutes of previous meeting have been read and acknowledged, and to record any corrections if required)

**Business arising from minutes:**

List discussion items, and describe the following for each:

- Actions taken
- Recommendations
- Who actions were taken by

**New business:**

List of discussion items similar to the above.

**Other business:**

**Next meeting:**

List date, time and location

**Signatures:**

- Worker Co-Chair, Management Co-Chair

**CC:**

- Responsible Line Manager/Supervisor
- Department Heads, Union(s), and Safety Bulletin Boards

# Appendix C: terms of reference

## The following information represents suggested items that could be included in a joint health and safety committee's terms of reference

The *Occupational Health and Safety Act (https://www.ontario.ca/laws/statute/90o01)* does not spell out detailed procedures about how a joint health and safety committee (JHSC) committee must operate but it does set out the key requirements to be met. Other than the requirements contained in the Act, a committee is free to decide its own procedures. It can be helpful for a committee to create terms of reference and written procedures even though there is no legal requirement to do so.

Terms of reference describe the purpose and structure of a committee. Terms of reference set out a road map. They give a clear path for the members, by stating what needs to be done (legislated requirements), by whom, and when. Terms of reference help keep a committee on track, clarify the meeting procedures to be followed, and help new members integrate into the way the committee functions. Terms of reference should be reviewed, at least, on an annual basis.

## Topics to consider:

a. appropriate committee structure, having considered legislated requirements
b. a procedure for the co-chairs to facilitate the operations and actions of the committee
c. a method for the selection of alternates and a protocol for their attendance at committee meetings
d. a meeting schedule for committee meetings setting out the frequency and place for meetings
e. a procedure for the attendance of resource persons at committee meetings
f. a determination of the number of certified members (if more than the minimum number) and a method for their selection
g. a schedule for inspection of the workplace and provisions for the conduct of inspections including a process by which the worker members shall designate from among themselves one member to perform the workplace inspections
h. a process to develop and convey recommendations in writing arising from inspections back to the co-chairs, the committee and to the employer
i. a method and system for providing accident statistics and information and other health and safety information
j. procedure for accident investigations, including types and severity of accidents to be investigated (beyond the legal requirements), including a method for designating a worker member to conduct the investigations
k. a method and system for reporting an accident investigation to the committee
l. a procedure for selection of members representing workers or designated workers in the workplace to accompany Ministry of Labour, Training and Skills Development inspectors during a physical inspection of the workplaces, or any part or parts thereof
m. a procedure for the selection of a member representing workers or designated workers in the workplace for the purposes of the statutory provisions for investigating a work refusal
n. a procedure for the selection of a worker member to attend the commencement of workplace testing
o. the arrangements with respect to minutes of meetings, including the requirement to identify issues and set out recommendations, the responsibility of taking, reviewing, circulating and editing of the minutes, and the preparation of agendas for meetings and notice of meetings
p. a determination of a quorum for a committee meeting
q. a method or system for achieving consensus at meetings
r. a procedure for dispute resolution by the committee
s. a procedure to address situations when the co-chairs do not agree on a recommendation
t. a procedure for the referral of issues to the committee

u. the entitlement of payment for members attending meetings or carrying out duties and responsibilities under the Act or the Regulations
v. a regular review of committee and members' responsibilities including confidentiality and effectiveness
w. such other health and safety matters as the workplace parties or committee members consider appropriate or necessary.

Please refer to the Multi-workplace JHSC guidance (https://www.labour.gov.on.ca/english/hs/pubs/jhsc_multiwork/index.php) for terms of reference.

Updated: December 11, 2019
Published: August 10, 2017

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Ontario

# Workplace Hazardous Materials Information System - A guide to the legislation

This guide provides an overview of the Workplace Hazardous Materials Information System (WHMIS), a Canada-wide system designed to give employers and workers information about hazardous products used in the workplace.

> You can also order a printed copy of the Workplace Hazardous Materials Information System - A guide to the legislation.

The Workplace Hazardous Materials Information System (WHMIS) is Canada's national standard for communicating information about hazardous workplace products. It is implemented through complementary federal, provincial and territorial laws. Originally established in 1988, the purpose of WHMIS is to ensure employers and workers receive consistent and comprehensive health and safety information about the hazardous products they may be exposed to at work. By setting standards for the type and amount of information to be given to the users of hazardous chemicals and biological agents, WHMIS is intended to reduce workplace injuries and illnesses related to such products.

The main elements of WHMIS are:

Product classification
: Products intended for use in the workplace are classified based on their hazardous properties.

Labels
: Provide basic information that a worker needs to know to safely use a hazardous product.

Safety data sheets (SDSs)
: Supplement the label with more detailed information about a product's physical and chemical characteristics, its hazardous properties and necessary handling precautions.

Worker education
: Ensures workers understand the information on labels and safety data sheets and can apply this knowledge on the job.

This guide is intended to give workplace parties a basic understanding of WHMIS and to direct readers to more detailed information, if needed.

This guide **does not replace** the *Occupational Health and Safety Act* **(OHSA) and its regulations, and should not be used as or considered legal advice**. Health and safety inspectors apply the law based on the facts in the workplace.

## WHMIS 1988 to WHMIS 2015 – Making the transition

WHMIS has changed to adopt new international standards for classifying hazardous materials and providing information on labels and safety data sheets. These new standards are part of the Globally Harmonized System for the Classification and Labelling of Chemicals (GHS) being phased in across Canada between February 2015 and December 2018. The GHS standards have been endorsed by the United Nations. They are also being implemented in many other countries including the United States, Australia, New Zealand, China, Japan and members of the European Union. The original WHMIS requirements are generally referred to as "WHMIS

1988" and the new ones are called "WHMIS 2015." To give suppliers, employers and workers time to adapt to the new system, the transition from WHMIS 1988 to WHMIS 2015 took place in three phases.

The transition to WHMIS 2015 ended on December 1, 2018. There should now be no hazardous products in the workplace with WHMIS 1988 labels and safety data sheets.

# The WHMIS legislation

WHMIS is implemented by complementary federal, provincial and territorial legislation and regulations. The main purpose of the **federal** WHMIS legislation is to require **suppliers** of hazardous products intended for use, handling or storage in a workplace to classify those products and provide health and safety information about them to their customers. The main purpose of the **provincial** and **territorial** WHMIS legislation is to require employers to obtain health and safety information about hazardous products from their suppliers, and to use that information to train their workers. In addition, confidential business information is protected under WHMIS.

# Federal WHMIS legislation

Federal WHMIS legislation is administered by Health Canada and includes:

1. The *Hazardous Products Act* (HPA) requires a supplier who sells or imports a hazardous product intended for use, handling or storage in a workplace in Canada to provide a label and safety data sheet to the purchaser of the product.
2. The *Hazardous Products Regulations* (HPR) set out the criteria a supplier must use to assess and classify a product into prescribed hazard classes and categories (e.g. flammable liquid, skin irritant, etc.); and, set out in detail the information a supplier is required to put on a label and a safety data sheet.
3. The *Hazardous Materials Information Review Act* (HMIRA) provides for the protection of confidential business information and defines the type of information that a supplier or employer may claim an exemption from disclosing on a label or safety data sheet. It assigns to Health Canada the responsibility for determining if a claim for exemption from disclosing confidential business information is valid.
4. The *Hazardous Materials Information Review Regulations* (HMIRR) set out the criteria that Health Canada must use when assessing the validity of a claim for exemption, and also set out the information that must be contained in a claim for exemption from disclosing confidential business information.

Under WHMIS 2015, there are key changes to the federal legislation:

- "Controlled Products" are now called "Hazardous Products."
- New rules and criteria for classifying hazardous chemicals improve the supplier's ability to indicate the severity of hazards.
- There are different hazard classes/categories and more of them.
- Supplier label requirements include new pictograms for hazard classes and prescribed hazard statements and signal words.
- Safety data sheets have a new, standardized 16-section format with prescribed information elements.
- Safety data sheets are required to be updated on an ongoing basis, as new information about a product becomes available. There is no longer a requirement to update a safety data sheet every three years.

# Ontario's WHMIS legislation

In Ontario, WHMIS requirements are in:

1. The *Occupational Health and Safety Act* (OHSA) generally requires employers to ensure hazardous products are identified, to obtain safety data sheets and make them available in the workplace and to

provide instruction and training to workers. The OHSA also provides for the protection of confidential business information according to procedures set out in the federal HMIRA.

2. The *Workplace Hazardous Materials Information System Regulation (R.R.O. 1990, Regulation 860)* sets out in detail the employer's duties respecting labels and safety data sheets for hazardous products and prescribes the content and delivery of worker education programs. The regulation also sets out the types of confidential business information the employer may withhold from a label or safety data sheet.

Ontario's WHMIS legislation applies to all workplaces covered by the *Occupational Health and Safety Act*, with the exception of farms.

# Enforcing WHMIS legislation

In Ontario, the Ministry of Labour, Training and Skills Development is responsible for the enforcement of both the federal and provincial WHMIS legislation. This is done so that employers and suppliers will not be subject to inspections by both federal and provincial inspectors. It means that Ministry of Labour, Training and Skills Development inspectors monitor compliance with the HPA, HPR, the OHSA and the WHMIS Regulation.

The OHSA and WHMIS Regulation do not apply to federally regulated workplaces such as banks, post offices and airports in Ontario. Instead, certain sections of the Canada Labour Code and the Canada Occupational Health and Safety Regulations implement WHMIS in federal workplaces and are enforced by inspectors of the federal government's labour program. Those pieces of legislation are not covered in this guide.

# WHMIS and the transportation of dangerous goods

In general, WHMIS requirements apply to hazardous products inside a workplace. Products being shipped to and from workplaces are covered by transportation of dangerous goods (TDG) legislation. No overlap is intended. The WHMIS Regulation specifically exempts a hazardous product that is being transported and handled under federal or provincial TDG legislation.

The federal *Transportation of Dangerous Goods Act, 1992* defines handling as “loading, unloading, packing or unpacking dangerous goods in a means of containment for the purposes of, in the course of or following transportation and includes storing them in the course of transportation.” Handling does not include use of a hazardous product.

It can be difficult to determine which requirements apply — WHMIS or TDG — when a hazardous product is in a warehouse. If a hazardous product is in temporary storage in a distribution warehouse, namely a warehouse operating as a trans-shipment point, and is not modified in any way at that warehouse, TDG requirements would apply. In this case, the goods are being stored for transport and are not handled except to be loaded onto a vehicle for removal from the warehouse.

If a hazardous product in a warehouse is repackaged (assembled, labelled or relabelled), processed or used, WHMIS requirements may apply.

# WHMIS and the supplier

The duties of a supplier of hazardous products intended for use, handling or storage in a workplace are set out in the federal *Hazardous Products Act* (HPA) and the *Hazardous Products Regulations* (HPR). Employers who buy hazardous products should understand the obligations of their suppliers to provide them with accurate health and safety information. More importantly, employers who either produce or import a hazardous product for use in their own workplaces assume the responsibilities of a supplier in respect of those products, with a few minor exceptions as explained in WHMIS and the employer.

# General duties

A supplier is a person who, in the course of business, sells or imports a hazardous product. Suppliers have three main duties:

1. To determine which of their products intended for use, handling or storage in a workplace are “hazardous products” as defined in the HPA. This is the “classification” step.
2. To label hazardous products as a condition of sale or importation.
3. To provide safety data sheets for hazardous products as a condition of sale or importation.

This part of the guide gives an overview of these duties. Detailed technical guidance for suppliers is available from Health Canada:

Health Canada
Address locator 0900C2
Ottawa, ON K1A 0K9

- 613 957-2991
- 1 866 225-0709
- 1 800 465-7735
- 
- Email: publications@hc-sc.gc.ca

# Classification

WHMIS 2015 introduces a new system for classifying hazardous products. There are at least three possible levels of classification for an individual product.

Moving from the most general classification to more specific ones, these levels are:

- hazard “group”
- hazard “class”
- hazard “category” and, in some cases,
- hazard “subcategory”

There are two broad hazard groups: physical hazards and health hazards. Products in the physical hazards group are classified based on characteristics such as flammability or reactivity. Health hazards are grouped based on their ability to cause a health effect, such as cancer or skin irritation. Both groups are divided into classes of materials with similar properties. There are 19 distinct classes in the physical hazards group and 12 classes in the health hazards group.

Classes in the Physical Hazards Group are:

1. Flammable gases
2. Flammable aerosols
3. Oxidizing gases
4. Gases under pressure
5. Flammable liquids
6. Flammable solids
7. Self-reactive substances and mixtures
8. Pyrophoric liquids

9. Pyrophoric solids
10. Self-heating substances and mixtures
11. Substances and mixtures which, in contact with water, emit flammable gases
12. Oxidizing liquids
13. Oxidizing solids
14. Organic peroxides
15. Corrosive to metals
16. Combustible dusts
17. Simple asphyxiants
18. Pyrophoric gases
19. Physical hazards not otherwise classified

Classes in the Health Hazard Group are:

1. Acute toxicity
2. Skin corrosion/irritation
3. Serious eye damage/eye irritation
4. Respiratory or skin sensitization
5. Germ cell mutagenicity
6. Carcinogenicity
7. Reproductive toxicity
8. Specific target organ toxicity — single exposure
9. Specific target organ toxicity — repeated exposure
10. Aspiration hazard
11. Biohazardous infectious materials
12. Health hazards not otherwise classified

Most hazard classes are further subdivided into categories and subcategories based on the severity of the hazard. Most categories are identified by a number and subcategories by a number and letter. The lower the category number, the more severe the hazard, for example, a product classified as a Flammable Liquid-Category 1 is more hazardous than a Flammable Liquid-Category 2.

### Determining if a product is a “hazardous product”

To determine if a particular product intended for use in the workplace is a hazardous product, a supplier should:

- identify the physical and toxicological properties of the product;
- consult Parts 2, 7 and 8 of the *Hazardous Products Regulations* (HPR), which set out the definitions and classification criteria relevant to each WHMIS hazard class, category and sub-category;
- compare the properties of the product to the criteria in the HPR.

A product is a “hazardous product” as defined in the HPA if it meets the criteria to be classified in at least one category or subcategory of any of the physical or health hazard classes listed above. Product classification is a complex process. Products should be evaluated in accordance with established scientific principles and using all available hazard data. Both suppliers and employers may need help from external experts.

## The supplier label

The supplier label is the worker’s first warning about the hazards of a product and how to use it safely. A supplier must put the following information on the label of a hazardous product (see section 3, of the *Hazardous Products Regulations*).

Product identifier

Can be any one of the brand name, chemical name, common name, generic name or trade name. The product identifier displayed on the label of a hazardous product must be identical to the one on the hazardous product's safety data sheet.

- An **employer** who considers the product identifier to be confidential business information may file a claim under the *Hazardous Materials Information Review Act* for exemption from disclosure (see Confidential business information). If the employer's claim is granted, the supplier would disclose a code name or number on the label in place of the product identifier (subsection 5.7(9), HPR).

Initial supplier identifier

The name, address and telephone number of either the Canadian manufacturer or importer of the hazardous product who operates in Canada. The initial supplier identifier displayed on the label of a hazardous product must be identical to the one on the safety data sheet.

- If an employer imports a hazardous product directly from a foreign supplier for use in its own workplace, the employer may retain the name, address and telephone number of the foreign supplier on the label instead of providing its own contact information (subsection 5.9(2), HPR).
- An employer who considers the supplier identifier to be confidential business information may file a claim under the *Hazardous Materials Information Review Act* for exemption from disclosure (see Confidential business information). If the employer's claim is granted, the supplier would not disclose its contact information on the label (subsection 5.7(10), HPR).
- The initial supplier identifier information may be replaced by a subsequent supplier information on both the label and the safety data sheet (section 5.8, HPR).

Pictogram(s)

Categories and subcategories of a hazard class have corresponding pictograms to convey the type of hazard (for example, a skull and crossbones to indicate acute toxicity). In general, the supplier label must include a pictogram for each WHMIS class/category that the hazardous product falls into (note that some hazard classes, such as combustible dust and simple asphyxiants, do not have pictograms). See the WHMIS 2015 pictograms.

Signal word

Either "Danger" or "Warning" is used to emphasize a hazard and to indicate its severity. "Danger" is used for more severe hazards.

Hazard statement(s)

A brief, standardized phrase to describe the nature of the hazard, for example, Causes Skin Irritation or Fatal if Swallowed.

Precautionary statement(s)

Recommended measures to minimize adverse effects from exposure to a hazardous product or resulting from improper storage or handling, for example, Wear Protective Gloves or Keep Away From Heat.

For some hazardous products, depending upon the classification, **supplemental information** is required on the supplier label. For example, the label for a product with an ingredient of unknown toxicity may require a statement of the percentage of that ingredient in the product. Information that is not required on a label may be added to it to provide further detail as long as it does not contradict or cast doubt on the required information. See an example of a supplier label that complies with WHMIS 2015.

## Updating the supplier label

The HPR require a supplier to update labels within 180 days of becoming aware of significant new data about a hazardous product (subsection 5.12(4), HPR). "Significant new data" means information about a product that would:

- change its classification in a category or subcategory of a hazard class,

- result in its classification in another class, or
- change the ways to handle it safely.

If a hazardous product is sold during the 180-day grace period, without an updated supplier label, the supplier must provide the buyer (i.e. the employer) with the significant new data in writing and the date on which the data became available. Suppliers are not required to inform past buyers of a hazardous product that significant new data is available.

### Design requirements of the supplier label

The design requirements of the supplier label have been modified under WHMIS 2015 and relate primarily to language, layout, and colour. A border is no longer required.

Language
: The supplier label must be in English and French. The supplier can make two separate labels, one for each language, or one bilingual label (section 6.2, HPR).

Layout
: The pictogram, signal word and hazard statements must be grouped together. Otherwise, the required information can be located anywhere on the label. While there is no minimum or maximum size specified for the supplier label, there is a general requirement that the label be easily legible (section 3.4, HPR).

Colour
: Any pictogram required to be provided on a label must reproduce the colour depicted in column 3 of Schedule 3 of the HPR.

### Labelling exceptions

Part 5 of the HPR sets out a number of exceptions to the general requirements for either providing a supplier label, or for providing certain information on a supplier label. Some key examples are listed below. Employers receiving these types of containers or products may wish to be familiar with the exceptions. Detailed information is available from Health Canada.

- Outer containers in multi-container shipment (section 5.2, HPR)
- Outer containers with at least two hazardous products packaged together (section 5.3, HPR)
- Small capacity containers – 100 ml or less; and 3 ml or less (section 5.4, HPR)
- Bulk shipments and unpackaged hazardous products (section 5.5, HPR)
- Laboratory samples (section 5, HPR)
- Mixture of radioactive nuclides and non-radioactive carriers (section 5.1, HPR).

## The supplier safety data sheet

A safety data sheet (SDS) is a technical document that summarizes health and safety information available about a hazardous product. It supplements the warning information on a label. A supplier's SDS is an important resource for the workplace but it is not intended to provide all of the information needed for the safe use of a product. The way a hazardous product is used, handled or stored, and consequently the hazard to the worker, can vary from plant to plant. The supplier is not expected to anticipate every required protective measure for every workplace to which a product is sold. The employer, through the worker education program, is expected to tailor the supplier's information to the conditions in the employer's workplace.

### General information requirements for supplier SDS

A supplier SDS must have at least 16 sections, presented in a standardized format. Sections must appear with the following headings and corresponding numbers, and must be in the order shown below.

1. Identification
2. Hazard identification
3. Composition/Information on ingredients
4. First-aid measures
5. Fire-fighting measures
6. Accidental release measures
7. Handling and storage
8. Exposure controls/Personal protection
9. Physical and chemical properties
10. Stability and reactivity
11. Toxicological information
12. Ecological information
13. Disposal considerations
14. Transport information
15. Regulatory information
16. Other information

See Schedule 1, of the HPR for the specific information required in each of the 16 sections. For sections 12-15, the headings must be shown on the SDS but the supplier can choose whether or not to provide any information (subsection 4(2), HPR). Where required information is either "not available" (i.e. the information cannot be located or does not exist) or "not applicable" (i.e. the information is not relevant, such as the "odour threshold" for an odourless product), the supplier must clearly indicate this on the SDS (subclause 4(1)(b)(i), HPR).

All required information must be provided in both English and French. The supplier may provide either a single bilingual SDS, or they may provide a single document with two unilingual parts.

## Special information requirements for supplier SDS

In some cases, a supplier's SDS must include specific information in addition to the 16 sections described above. Examples include:

Biohazardous Infectious Material

Where a hazardous product is classified as a "Biohazardous Infectious Material," the HPR requires additional information to be included on the supplier SDS. See subsection 4(3) and Schedule 2 of the HPR for details.

Combining Hazardous Products

Additional information must be added to the SDS when the instructions for using a hazardous product require it to be combined with one or more materials, and doing so creates a new material that presents either new or more severe hazards than already identified on the SDS. For each new material, the supplier must provide the following, which can appear anywhere on the SDS (section 4.1, HPR):

1. The nature of the new or more severe hazard; and
2. The information normally required for SDS under sections 4 – 11 (see Schedule 1, of the HPR).

## Use of generic SDSs

A generic SDS may be used for a group of hazardous products with the same hazard classification and similar chemical composition. For example, a generic SDS can be used for a series of paints where the only difference between products is the pigment used. A generic SDS must include the names of all hazardous products to which it applies. For any one product, if the concentration or concentration range of an ingredient, or other hazard information differs from that of other products in the group, these differences must be disclosed on the SDS (see Health Canada, "Technical Guidance on the Requirements of the *Hazardous Products Act* and the *Hazardous Products Regulations*").

### Updating the SDS

A supplier must ensure that the SDS for a hazardous product is accurate, current and meets requirements in the HPR every time the product is sold. If a supplier becomes aware of significant new data about a hazardous product, the supplier must update the SDS within 90 days (subsection 5.12(3), HPR). "Significant new data" means information about a product that would:

- change its classification in a category or subcategory of a hazard class,
- result in its classification in another class, or
- change the ways to handle it safely.

If a hazardous product is sold during the 90-day grace period, without an updated supplier SDS, the supplier must provide the buyer (i.e. the employer) with the significant new data in writing and the date on which the data became available. Suppliers are not required to inform past buyers of a hazardous product that significant new data is available.

## Exemptions from the federal WHMIS legislation

The federal WHMIS legislation does not apply to the products listed below. No supplier label or SDS is required on the sale or importation of any (section 12 and Schedule 1, of the HPA):

- Nuclear substance within the meaning of the *Nuclear Safety and Control Act*, that is radioactive;
- Hazardous waste, being a hazardous product that is sold for recycling or recovery or is intended for disposal;
- Tobacco or a tobacco product as defined in the *Tobacco Act*;
- Pest control products as defined in the *Pest Control Products Act*;
- Explosives as defined in the *Explosives Act*;
- Cosmetics, drugs, devices or food as defined in the *Food and Drugs Act*;
- Consumer products as defined in the *Canada Consumer Product Safety Act*;
- Any wood or product made of wood; or
- Manufactured article.

**Note:** Some requirements in Ontario's WHMIS Regulation apply to some of the above products. These are explained in WHMIS and the employer.

### What is a manufactured article?

A manufactured article is any article that meets all of these conditions (section 2, HPR):

1. It is formed to a specific shape or design during manufacture;
2. Its intended use depends, either fully or partly, on that specific shape or design;
3. Under normal conditions of use, it will not release or cause an individual to be exposed to a hazardous product; and
4. When being installed, it will not release or cause an individual to be exposed to a hazardous product (if installation is necessary in order to use the article as intended).
   **Note:** under WHMIS 1988, the definition of manufactured article did not include exposure to a hazardous product during the installation process.

The following examples are given to further illustrate the exemption for manufactured articles.

- Welding rods are not manufactured articles because — although formed to a specific design — during use they release hazardous products previously contained in the rods.

- Piping, whether made of mild, galvanized or stainless steel, is a manufactured article because it does not release hazardous products during its intended use of conveying fluids from one point to another.
- Sheets of friction materials that contain asbestos and which are manufactured with the intent of later being cut or shaped to form specific friction products are not manufactured articles.
- A cylinder produced for the purposes of containing acetylene is a manufactured article. Once filled with acetylene, however, the cylinder is a container for a hazardous product and, when sold as such, must be provided with a label and safety data sheet.
- A refrigerator is a manufactured article made up of various components including a system for containing compressed gases. Unlike the compressed gas cylinder, the refrigerator is not considered to be a container of a hazardous product.

# WHMIS and the employer

# General duties

The *Occupational Health and Safety Act* (OHSA) and *WHMIS Regulation* set out the duties of an employer at a workplace where hazardous products are used, handled or stored. In general, an employer is required to:

1. ensure that hazardous products are identified (subsection 37(1), OHSA);
2. obtain or prepare current SDSs for hazardous products and make those SDSs available to various parties (subsection 37(1) and section 38, OHSA and sections 8-14, WHMIS Reg.);
3. ensure that a worker who is exposed or likely to be exposed to a hazardous product receives instruction and training (subsection 42(1), OHSA); and,
4. assess all biological and chemical agents that the employer produces for its own use to determine if they are hazardous products (subsection 39(1), OHSA, section 3, WHMIS Reg.).

## An exception

While the OHSA requires an employer to ensure a hazardous product is not used, handled or stored at a workplace unless prescribed requirements concerning identification, SDSs and worker instruction and training have all been met (subsection 37(3), OHSA), the WHMIS Regulation provides an exception. It permits an employer to store a hazardous product received from a supplier without a label on it, without obtaining an SDS for it, and without providing worker education, while the employer is actively seeking a supplier label and SDS for the product (subsection 5(1), WHMIS Reg.). The employer must notify the Ministry of Labour, Training and Skills Development in writing if, after making reasonable efforts, the employer is unable to obtain a supplier label or SDS (subsection 37(4), OHSA).

Similarly, an employer may store a hazardous product that the employer has produced for its own use, without attaching a label or other identification, without preparing an SDS for it and without providing worker education, while the employer is actively seeking the information needed to prepare a workplace label and SDS for the product (subsection 5(2), WHMIS Reg.).

# Labelling and identification

Several factors affect the requirements for labels and identification on a hazardous product including, for example, how it is packaged, the size of the container, whether it has been transferred from its original container, whether it was purchased from a Canadian supplier or imported directly from a foreign supplier, or produced in the employer's own workplace. The employer's duties to ensure hazardous products are properly identified are described below. The OHSA prohibits any person from removing or defacing the identification on a hazardous product (subsection 37(2), OHSA).

## The supplier label

The employer must ensure that every hazardous product received from a supplier, whether in a container or not, is labelled with a supplier label (subsection 8(1), WHMIS Reg.). If a supplier label is accidentally removed, destroyed or becomes illegible, the employer must replace it with either a new supplier label or a workplace label (subsection 8(3), WHMIS Reg.). See below for information about workplace labels.

The employer is prohibited from altering a supplier label as long as any hazardous product is still in the container received from the supplier (subsection 8(2), WHMIS Reg.).

## Exception for small containers

A supplier label may be removed from a container with a capacity of 3 millilitres or less if the label interferes with the normal use of the hazardous product (subsection 8(4), WHMIS Reg.).

## Imported hazardous products

An employer who imports and receives a hazardous product for use in its own workplace, either without a supplier label or with a supplier label that does not comply with the requirements of the federal HPR, must attach a label to the product that meets the labelling requirements of the HPR for that product (subsection 8(6), WHMIS Reg.). In effect, the employer must create the equivalent of a supplier label.

Generally, a supplier label must display the name, address and telephone number of the Canadian manufacturer or importer of the hazardous product who operates in Canada (i.e. the "initial supplier identifier" as defined in the HPR). However, if the Canadian importer is an employer, importing a hazardous product directly to its own workplace, and only for use in its own workplace, the employer can retain the name, address and telephone number of the foreign supplier on the label and SDS, rather than replacing it with its own contact information. This small exception is provided by the HPR (section 5.9).

## Bulk shipments and unpackaged hazardous products

A "bulk shipment" means a shipment of a hazardous product that is contained without intermediate containment or intermediate packaging in,

a. a vessel with a water capacity equal to or greater than 450 litres;
b. a freight container, road vehicle, railway vehicle or portable tank;
c. the hold of a ship; or
d. a pipeline (subsection 1(1), WHMIS Reg.).

If an employer receives a hazardous product transported as a bulk shipment or without packaging, without a supplier label, the employer must label the hazardous product or the containers into which it is off-loaded with a label that meets the labelling requirements of the HPR for that product (subsection 8(7), WHMIS Reg.). The employer can use the supplier's SDS, which must contain all required labelling information, to create a supplier label. Employers have this duty because suppliers are exempt under federal law from providing a label for bulk shipments or unpackaged hazardous products, although some may voluntarily provide one.

There are circumstances where the employer is permitted to use a placard to identify the hazardous product (section 12, WHMIS Reg.). One example would be a bulk shipment or unpackaged hazardous product that is transferred directly into a piping system. Where a placard is used, it must contain the information normally required on a workplace label (clause 12(b), WHMIS Reg.).

## Updating the supplier label

If an employer receives significant new data from a supplier about a hazardous product, the employer must use this information to update every relevant supplier label as soon as practicable (subsection 8(5), WHMIS Reg.).

This duty applies to any container of the hazardous product in the workplace including past shipments of the product. The employer's duty complements provisions in the federal HPR that require a supplier to update labels within 180 days of becoming aware of significant new data about a hazardous product. "Significant new data" means information about a product that would:

- change its classification in a category or subcategory of a hazard class,
- result in its classification in another class, or
- change the ways to handle it safely.

If a hazardous product is sold during the 180-day grace period, without an updated supplier label, the supplier must provide the buyer (i.e., the employer) with the significant new data in writing and the date on which the data became available. Suppliers are not required to inform past buyers of a hazardous product that significant new data is available.

## The employer's workplace label

A workplace label is a label made by an employer and used only in the employer's workplace. The information requirements for a workplace label are general and employers have some flexibility regarding language and format but it must contain three items:

A product identifier identical to that on the SDS for the hazardous product
: meaning it must be the brand name, chemical name, common name, generic name, trade name, code name or code number of the hazardous product.

Information for the safe handling of the hazardous product
: meaning precautions that the worker must take to minimize the risks of adverse health effects or physical injury. These precautions can be conveyed using pictures, words, pictograms or any other mode of communication. Whatever mode of communication is used, it must be combined with worker education to ensure that the purpose and significance of the information is conveyed to workers.

A statement that a safety data sheet, if supplied or produced, is available
: For some hazardous products, no safety data sheet will be available; for example, the hazardous products listed in Hazardous products exempt from WHMIS of this guide as partially exempt from the WHMIS Regulation. In such cases, a workplace label would not require any statement regarding a safety data sheet.

## Employer-produced hazardous products

An employer who produces a hazardous product in its own workplace must ensure that the product or its container has a workplace label (subsection 9(1), WHMIS Reg.).

There is an exception to this requirement – a workplace label is not required if the hazardous product is packaged for sale or disposition, and it is already, or is about to be, appropriately labelled (subsection 9(2), WHMIS Reg.). An example would be a hazardous product such as household bleach that is in a container, ready for sale or distribution to retail outlets, and is labelled according to requirements in consumer protection legislation.

## Decanted hazardous products

In general, if a hazardous product is transferred from the supplier container into another container at the workplace, the second container must have a workplace label (subsection 10(1), WHMIS Reg.).

There are two exceptions. No label is required on a portable container filled directly from a container with a supplier or workplace label:

1. if all of the hazardous product in the portable container is required for immediate use (clause 10(2)(b), WHMIS Reg.); or

2. if all of the following conditions are met (clause 10(2)(a), WHMIS Reg.):
    i. the hazardous product is used only by the worker who filled the portable container;
    ii. the hazardous product is used only during the shift in which the portable container was filled; and
    iii. the contents of the portable container are clearly identified.

There is no prescribed form that must be used to identify the contents of a portable container as referred to in 2(iii) above. The ministry recommends as a best practice that the employer use the chemical name, common name, generic name, trade name or brand name of the product to clearly identify the contents of a portable container (i.e. means of clear identification that is understood by workers).

### Updating a workplace label

An employer is required to update a workplace label as soon as practicable after significant new data about the product becomes available to the employer (subsection 9(3), WHMIS Reg.).

### Identifying hazardous products in piping systems and vessels

When a hazardous product is contained or transferred in,

a. a pipe,
b. a piping system including valves,
c. a process vessel,
d. a reaction vessel, or
e. a tank car, tank truck, ore car, conveyor belt or similar conveyance.

The employer must ensure its safe use, handling and storage through a combination of worker education and any clear means of identification such as colour coding, labels, placards, piping diagrams, warning signs, etc. (section 11, WHMIS Reg.). The employer can use any means of clear identification as long as it is understood by workers. The education program should also explain procedures for the safe handling of hazardous products contained in (a) to (e).

Note: A safety data sheet is required for a hazardous product contained in a piping system or vessel unless it is an intermediate undergoing further reaction.

### Placard identifiers

The employer is allowed to post a placard to meet the labelling requirements of the WHMIS Regulation if the hazardous product:

1. is not in a container,
2. is in a container or form intended for export, or
3. is already packaged for sale or distribution, and the containers will be appropriately labelled within the normal course of the employer's business, but not immediately.

The placard posted must contain the information normally required on a workplace label for the hazardous product, and must be clearly visible and legible to workers (section 12, WHMIS Reg.).

## Safety data sheets (SDS)

Under the OHSA, employers have a general duty to obtain or prepare a current SDS for all hazardous products present in the workplace, as may be prescribed. More specific requirements are in the WHMIS Regulation.

### The supplier SDS

An employer who purchases a hazardous product for use, handling or storage at a workplace must obtain a supplier SDS for the product. Under federal law, it is the supplier's responsibility to ensure that the SDS for a hazardous product is current and complies with all applicable requirements every time the product is sold. Where a supplier is exempted under federal law from providing a SDS, the employer is not required to obtain one (subsection 17(1), WHMIS Reg.). By definition, a "supplier safety data sheet" is one that meets the requirements of the federal HPR (subsection 1(1), WHMIS Reg.).

An employer must notify the Ministry of Labour, Training and Skills Development in writing if, after making reasonable efforts, he/she is unable to obtain a SDS from the supplier (subsection 37(4), OHSA).

## Updating a supplier SDS

An employer is required to update the most recent supplier SDS at the workplace as soon as practicable after significant new data about a product is provided by the supplier, or becomes available to the employer in some other way (subsection 17(2), WHMIS Reg.). "Significant new data" means information about a product that would change its classification in a category or subcategory of a hazard class, or result in its classification in another hazard class, or change the ways to handle the product safely.

This employer duty complements provisions in the federal HPR that require a supplier to update a SDS within 90 days of becoming aware of significant new data about a hazardous product. If a hazardous product is sold during the 90-day grace period, without an updated supplier SDS, the supplier must provide the buyer (i.e., the employer) with the significant new data in writing and the date on which the data became available. Suppliers are not required to inform past buyers of a hazardous product that significant new data is available.

## Alternate SDS permissible

For hazardous products purchased from a supplier, an employer may provide a SDS in a different format, or containing more hazard information than the supplier's SDS, on two conditions:

a. the SDS has no less content than the supplier's SDS (with the exception of information withheld on the grounds that it is confidential business information); and,
b. the supplier's SDS is available at the workplace and the SDS provided by the employer states that fact (subsection 17(3), WHMIS Reg.).

## The employer SDS

An employer who produces a hazardous product for use in its own workplace must prepare a SDS for the product that meets the requirements in the federal HPR for a supplier SDS (subsection 18(1), WHMIS Reg.). An employer must update the workplace SDS as soon as practicable, but not later than 90 days, after significant new data about the hazardous product becomes available to the employer (subsection 18(3), WHMIS Reg.).

No workplace SDS is required for a laboratory sample produced by the employer at the workplace (subsection 18(2), WHMIS Reg.). See Special applications of WHMIS of this guide for more information on laboratory samples.

## Disclosure of data source for employer SDS

Subject to any exemptions for confidential business information, the employer must disclose the source of any toxicological data the employer used to prepare the workplace SDS, if asked to do so by an inspector, a worker, a member of a joint health and safety committee, a health and safety representative, or a representative of the workers if there is no joint health and safety committee or health and safety representative (section 25, WHMIS Reg.).

### Making SDSs available in the workplace

The OHSA requires the employer to make copies of current SDSs:

a. available to all workers (clause 38(1)(a), OHSA);
b. readily available to those workers who may be exposed to the hazardous product to which an SDS relates (subsection 38(1.1), OHSA); and
c. available to the joint health and safety committee (JHSC) or a health and safety representative (HSR), if any, or a worker representative where there is no joint health and safety committee or health and safety representative (clause 38(1)(b), OHSA).

The employer is required to consult the joint health and safety committee or health and safety representative, if any, on how best to make SDSs available in the workplace, both to workers and to the joint health and safety committee or health and safety representative (subsection 38(6), OHSA). As a general principle, making copies of SDSs (whether paper or electronic) readily available to workers who may be exposed to a hazardous product means that they must be located close to the workers and accessible during each shift. It would not be acceptable, for example, to keep safety data sheets, or a computer terminal for accessing safety data sheets, in an office that is remote from the shop floor or that is locked during the night shift.

### Electronic copy

The employer is not required to provide paper copies of SDSs. Providing a SDS in an electronic format complies with requirements in the OHSA for making a SDS available at the workplace and to prescribed parties outside the workplace (subsection 38(5), OHSA).

**Note:** The OHSA provides for distribution of SDSs outside the workplace, to medical officers of health, fire departments and the Ministry of Labour, Training and Skills Development. Members of the public have access to SDSs through their local medical officer of health (section 38).

## Worker education

### General information to be provided to workers

An employer must ensure that a worker who works with, or may be exposed to a hazardous product is informed about all hazard information the supplier has provided about the product. In general, this means the information on supplier labels and safety data sheets, but it can also include other information such as letters from the supplier in response to inquiries from the employer. Workers must also be informed of any other hazard information that the employer is or ought to be aware of concerning the product's use, handling or storage (subsection 6(1), WHMIS Reg.).

Similarly, if a hazardous product is produced in the workplace, the employer must ensure every worker who works with or may be exposed to the product is informed about all hazard information the employer is or ought to be aware of concerning its use, handling and storage (subsection 6(2), WHMIS Reg.).

### Information the employer "is or ought to be aware of"

To understand what hazard information the employer "is or ought to be aware of" the following are considered to be sources of occupational health and safety information that the employer should know about:

- Publications and on-line information from the Canadian Centre for Occupational Health and Safety;
- Publications from the employer's industry or trade association, or from labour organization(s) representing workers at the workplace; and
- Publications and on-line information from the Ministry of Labour, Training and Skills Development.

There may be sources in addition to those listed above that the employer may wish to consult.

## Specific topics to be covered in a worker education program

A worker education program on hazardous materials must include instruction on the following (subsection 7(1), WHMIS Reg.):

a. Labels — the information required on a supplier and workplace label and the purpose and significance of the information;
b. Modes of identification when used at the workplace instead of labels;
c. SDSs — the information required, and the purpose and significance of the information;
d. Procedures for the safe use, storage, handling, and disposal of a hazardous product;
e. Procedures for the safe use, storage, handling and disposal of a hazardous product when it is in a piping system, a process vessel or conveyance such as a tank car;
f. Procedures to be followed when fugitive emissions are present; and
g. Procedures to be followed in case of an emergency involving a hazardous product.

## Participating in worker education programs

Under the OHSA, an employer has a general duty to ensure a worker "exposed or likely to be exposed" to a hazardous product receives and participates in prescribed instruction and training (subsection 42(1), OHSA). The WHMIS Regulation requires a worker "who works with or who may be exposed in the course of his or her work to a hazardous product" to receive certain information (section 6, WHMIS Reg.). The following points are intended to guide workplace parties and inspectors when determining which workers should participate in instruction and training:

1. An "exposed worker" is any worker who uses, handles, stores or disposes of a hazardous product, or who directly supervises another worker performing these activities.
2. A worker "likely to be exposed" is any worker who could be at risk during:
    - the use, handling, storage or disposal of a hazardous product;
    - maintenance operations; or
    - emergencies, such as an accidental leak or spill.

### Examples

1. Bulk quantities of chlorine are piped above ground from the receiving point at a pulp and paper mill to a storage location on site for use as a bleaching agent. Education about the hazards of chlorine will be required for all workers at the plant who may be exposed.
2. A container of benzene at a hospital for transfer to and use in a laboratory. Instruction on the product will be required for the shipper/receiver, the worker who takes the container to the laboratory, lab personnel who handle, store or use the product, workers responsible in event of an emergency with the product and supervisors as appropriate.
3. Boxes of welding rods are received at an auto manufacturing plant that employs 600 workers for use by five welders in an assembly area. No workers other than the welders are likely to be exposed to welding fumes. Instruction will be required only for the five welders and supervisors as appropriate.
4. In a retail store, education must be provided to those workers who routinely handle large quantities of hazardous and consumer products, and those workers who may be exposed as the result of a spill or other accident (e.g. warehouse staff).

## Developing and implementing a worker education program

The worker education program must be developed and implemented for the employer's workplace and be related to any other training, instruction and prevention programs at the workplace (subsection 7(2), WHMIS Reg.). In

developing and implementing the program, the employer must consult the joint health and safety committee or health and safety representative (subsection 42(2), OHSA). There is no specific requirement to keep records of WHMIS training, but an employer may wish to do so to be able to demonstrate to an inspector that workers have received appropriate information and instruction.

### Evaluating workers

The employer must ensure, so far as is reasonably practicable, that the WHMIS education program results in workers being able to use the information to protect their health and safety (subsection 7(3), WHMIS Reg.). The OHSA requires the employer to review the worker's familiarity with the training and instruction provided at least annually, and in consultation with the joint health and safety committee or health and safety representative, if any (subsection 42(3), OHSA).

It is left to the individual employer to devise the means to determine that a worker has been properly trained and instructed. For example, the employer may ask workers to take some form of written or oral test, or to participate in a practical demonstration of their knowledge. Subsection 7(3) of the WHMIS Regulation includes the phrase "so far as is reasonably practicable" because it is recognized the employer may have difficulty at times determining with certainty what workers have learned, due either to language or literacy problems. In general, workers should be able to answer the following questions for every hazardous product they use.

1. What are the hazards of this product?
2. How do I protect myself?
3. What should I do in an emergency?
4. Where is the safety data sheet? Where can I get more information?

### Reviewing the worker education program

At least once a year, the employer must review the training and instruction provided to workers, in consultation with the joint health and safety committee or health and safety representative of the workplace, if any (subsection 42(3), OHSA). This review must take place more often if:

1. the employer, on the advice of the joint health and safety committee or health and safety representative, determines that such reviews are necessary (clause 42(4)(a), OHSA); or
2. there is a change in circumstances that may affect worker health and safety (clause 42(4)(b), OHSA).

A change in circumstances could include a change in workplace conditions, or a hazardous product new to the workplace, or new hazard information about a product already in use.

The requirement for a review of the education program does not necessarily mean that workers will need retraining. The review is meant to identify whether updating the education program and/or retraining are necessary. An employer may demonstrate that reviews have been conducted in various ways, for example, through the keeping of records, or in the minutes of a joint health and safety committee meeting.

### Paying workers for time spent in training

Although this issue is not directly addressed in any of the WHMIS legislation, it is the Ministry of Labour, Training and Skills Development's position that time spent at training sessions should be considered work time. Therefore, workers should be paid at their regular or premium rate in accordance with their collective agreement, if any, or the *Employment Standards Act, 2000*.

## Assessing employer-produced products

An employer is required to assess every biological and chemical agent produced for use in the employer's own workplace to determine if it is a hazardous product (section 39, OHSA and subsection 3(1), WHMIS Reg.). To do this assessment, the employer must go through the same steps that a supplier goes through when classifying products intended for sale to other workplaces. The employer should:

- identify the physical and toxicological properties of the biological or chemical agent;
- consult Parts 2, 7 and 8 of the Hazardous Products Regulations HPR, which set out the definitions and classification criteria relevant to each WHMIS hazard class, category and sub-category;
- compare the properties of the biological or chemical agent to the criteria in the HPR.

If the material meets the criteria of any category or sub-category of a WHMIS hazard class, it is a hazardous product.

The employer's assessment of any biological or chemical agent must be in writing. A copy of it must be available to workers and given to the joint health and safety committee or health and safety representative (if any), or else it must be given to a representative of the workers if there is no joint health and safety committee or health and safety representative (subsection 39(2), OHSA).

Assistance to the employer to properly assess and classify hazardous products is available from private consultants and from the Canadian Centre for Occupational Health and Safety.

# Hazardous products exempt from WHMIS

The WHMIS Regulation provides complete or partial exemptions for various hazardous products, including hazardous waste.

## 1. Complete exemption

The WHMIS Regulation does not apply to a hazardous product that is:

a. wood or a product made of wood;
b. tobacco or a tobacco product as defined in section 2 of the *Tobacco Act*;
c. a manufactured article (see What is a manufactured article? of this guide for a definition and examples that illustrate the exemption for manufactured articles) ; or,
d. being transported or handled pursuant to either Ontario or federal transportation of dangerous goods legislation (subsection 4(3), WHMIS Reg.).

## 2. Partial exemption

The WHMIS Regulation has limited application to a hazardous product that is:

a. an explosive as defined in the *Explosives Act* (Canada);
b. a cosmetic, device, drug or food as defined in the *Food and Drugs Act* (Canada);
c. a pest control product as defined in the *Pest Control Products Act* (Canada);
d. a nuclear substance that is radioactive and defined in the *Nuclear Safety and Control Act* (Canada); or
e. a consumer product as defined in the *Canada Consumer Product Safety Act* (Canada) (subsection 4(2), WHMIS Reg.).

While WHMIS label and SDS requirements do not apply to these products, if any of them are used, handled or stored at a workplace, the employer is still required to train workers who are or may be exposed. Various laws govern the sale and use of these products and include labelling and other information requirements. Worker training should result in workers being able to understand the existing product labels and information and using the products safely.

### 3. Hazardous waste

"Hazardous waste" is defined as a hazardous product that is acquired or generated for recycling or recovery or is intended for disposal (subsection 1(1), WHMIS Reg.). An employer is required to ensure the safe storage and handling of hazardous waste through a combination of identification and worker education (subsection 4(4), WHMIS Reg.). Any means of container identification would be considered acceptable, as long as it is understood by the workers. Examples include:

a. colour coding of hazardous waste containers (in combination with education to ensure that workers will recognize the meaning of the colour);
b. a warning sign with the words, "Caution — Hazardous Waste"; or
c. a warning sign with a picture that conveys the appropriate message.

The employer is not required to provide a label or SDS for containers of hazardous waste.

### 4. Other exemptions

No workplace label, identification or SDS is required for a fugitive emission, or for a hazardous product that exists only as an intermediate and undergoes further reaction within a process or reaction vessel (subsection 1(2), WHMIS Reg.).

"Fugitive emission" means a gas, liquid, solid, vapour, fume, mist, fog or dust that meets the following conditions:

1. The gas, liquid, solid, vapour, fume, mist, fog or dust escaped from process equipment, from emission control equipment or from a product.
2. Workers may be readily exposed to the gas, liquid, solid, vapour, fume, mist, fog or dust (subsection 1(1), WHMIS Reg.).

"Fugitive emission" refers to a small amount of a hazardous product that is known to escape from process equipment or from emission control equipment where workers may be readily exposed (e.g. a volatile organic compound such as benzene at a chemical plant escaping due to leakage from a valve). It does not refer to an escaped amount that would require any type of containment or clean-up measures to be taken nor does it include emissions to the environment.

## WHMIS and the worker

## The worker's right to know about hazards

One of the three basic rights that the OHSA gives to all workers is the right to know about hazards they may be exposed to on the job. Compliance with the OHSA and WHMIS Regulation is necessary to fulfill the worker's right to know about hazardous chemical and biological agents in the workplace. Under WHMIS, workers have access to labels, safety data sheets and training and instruction about hazardous products. In addition, through the joint health and safety committee or health and safety representative, workers have the right to be consulted about how the WHMIS training is developed and implemented. While the OHSA does not address who should deliver WHMIS training, the Ministry of Labour regards the principle of workers training other workers as a good one, which should be encouraged where appropriate.

## The worker's responsibilities

Workers also have responsibilities that support the successful implementation of a WHMIS program at a workplace. In general, a worker should:

- read and follow instructions on product labels and safety data sheets,
- follow procedures established for the workplace, including the use of personal protective equipment,
- participate in instruction and training,
- ask a supervisor if unsure about how to use or handle a particular product, and
- report to the employer or supervisor any contraventions of the legislation or hazards, such as the absence of a safety data sheet for a new product, or a label that can no longer be read.

# Special applications of WHMIS

# Laboratories and laboratory samples

Under WHMIS 2015, the exemptions that previously applied to products originating from a laboratory supply house and intended for use in a laboratory have been eliminated. However, specific provisions for laboratory samples still exist. A laboratory sample is defined as

> a sample of a hazardous product that is packaged in a container that contains less than 10 kg of the hazardous product and that is intended solely to be tested in a laboratory but does not include a sample that is to be used:
>
> a. by the laboratory for testing other products, mixtures, materials or substances; or
> b. for educational or demonstration purposes" (subsection 1(1), WHMIS Reg.).

## Laboratory samples received from a supplier

The federal HPR provides certain exemptions to suppliers respecting labels and SDSs for samples of hazardous products sent to a laboratory for analysis (i.e. possession of the sample has been transferred but not ownership). The employer at a laboratory receiving a sample of a hazardous product does not have to obtain a full supplier label if:

- the laboratory sample is exempt from labelling requirements under the HPR, and
- an abbreviated supplier label that discloses the following information is provided:

  The statement "Hazardous Laboratory Sample, for hazard information or in an emergency call/ **Échantillon pour laboratoire de produit dangereux. Pour obtenir des renseignements sur les dangers ou en cas d'urgence, composez** …" followed by an emergency telephone number for a person who can provide the emergency information required on the SDS for the hazardous product (section 14, WHMIS Reg.).

  1. The chemical name or generic chemical name, if known to the supplier, of every material or substance in the sample that,
     i. individually, is classified in a category or subcategory of a hazard class listed in the *Hazardous Products Act* (Canada) and, is present above the concentration limit designated for that category or subcategory, and
     ii. in a mixture, is present at a concentration that results in the mixture being classified in a category or subcategory of a hazard class.

The employer is not required to obtain a supplier SDS for a laboratory sample if the supplier is not required to prepare one (subsection 17(1), WHMIS Reg.). Under the HPR, a supplier is exempted from providing a SDS for a laboratory sample if:

- the chemical name and concentration of the hazardous product or its ingredients are unknown, or
- the hazardous product from which the sample originates has not been offered for sale (subsection 5(4), HPR).

In addition, if a laboratory sample is classified only as Biohazardous Infectious Material – Category 1, and possession but not ownership is transferred, the sample does not require a label or SDS (subsection 5(3), HPR).

### If a lab sample is transferred or decanted from the supplier's original container

No workplace label is required, but the employer must ensure that the lab sample is clearly identified through a combination of identification visible to workers and worker education. The combination of identification and education must enable lab workers handling the sample to readily identify and obtain either the information required on a SDS, if one has been prepared or the labelling information required on an abbreviated supplier's label (section 15, WHMIS Reg.).

### If a lab sample is produced in the employer's workplace

No workplace label is required for a laboratory sample that is produced in the employer's workplace, but the employer must ensure that the sample is clearly identified through a combination of identification visible to workers and worker education. The identification and education must enable lab workers handling the sample to readily identify and obtain either the information required on a SDS, if one has been prepared, or the labelling information required on an abbreviated supplier's label (section 15, WHMIS Reg.).

No SDS is required for a hazardous product that is a laboratory sample produced by the employer at the workplace (subsection 18(2), WHMIS Reg.).

### Hazardous product produced for research and development

No workplace label is required on a hazardous product that is produced in a lab, not removed from the lab, and intended by the employer solely for research and development purposes. Instead the employer must ensure that the hazardous product is clearly identified through a combination of identification and education that enables workers to identify and obtain either the information required on a SDS, if one has been prepared, or such other information as is needed for the safe use, storage and handling of the product (section 16, WHMIS Reg.).

## Construction projects

This section describes the application of WHMIS to construction projects. While there are no requirements in the WHMIS legislation that apply specifically to construction projects, this information is provided because there are differences between construction projects and other workplaces that affect the division of employer responsibilities. Specifically, a construction project may be a multi-employer site. The constructor is an employer, but so is every contractor or sub-contractor associated with a building trade, such as the employer of the electricians, the employer of the painters, etc. The information below is intended to clarify the responsibilities of the constructor, who has overall responsibility for the whole project, and the responsibilities of the contractor or sub-contractor who employs a group of tradespeople who may be on site for only part of the duration of the entire project.

### Responsibilities of the constructor

Key responsibilities of a constructor in relation to WHMIS include:

1. To ensure that all hazardous products on the project are labelled.
2. To maintain, and make available to workers, copies of all SDSs received from contractors and sub-contractors at the project.
3. To train the constructor's workers about WHMIS and about the hazardous products that the constructor brings on site.
4. To resolve any WHMIS-related conflicts among contractors and sub-contractors on site.

Responsibility 4 is not specifically set out in the OHSA but is suggested as important to the successful implementation of WHMIS on construction projects. It may be considered to fall under the employer's general duty in the OHSA to take every precaution reasonable in the circumstances for the protection of a worker (clause 25(2)(h), OHSA) or the constructor's duty in the OHSA to ensure that the health and safety of workers on the project is protected (clause 23(1)(c), OHSA).

## Responsibilities of contractors and sub-contractors

Key responsibilities of contractors and sub-contractors in relation to WHMIS include:

1. To ensure that any hazardous product the contractor or sub-contractor brings on site is labelled.
2. To maintain, and make available to workers, SDSs for hazardous products the contractor or sub-contractor brings on site.
3. To give the constructor copies of all SDSs for hazardous products the contractor or sub-contractor brings on site.
4. To train their own workers about WHMIS and about the hazardous products they may be exposed to.
5. To inform other contractors, sub-contractors and workers who may be affected by the hazardous products that the contractor or sub-contractor brings on site.
6. To inform the constructor of WHMIS-related conflicts among contractors or sub-contractors on the project.

Responsibilities 3, 5 and 6 above are not specifically set out in the OHSA but are suggested as important to the successful implementation of WHMIS on construction projects. They may be considered to fall under the employer's general duty in the OHSA to take every precaution reasonable in the circumstances for the protection of a worker (clause 25(2)(h), OHSA).

### Where a construction project is carried out in an operating workplace (e.g, a renovation to an existing plant), what are the responsibilities of the constructor and the employer of the workplace)?

**Note:** In some cases, the constructor and the employer may be one and the same.

1. The employer should give the constructor the SDSs for any hazardous products in the employer's workplace that the constructor's workers may be exposed to.
2. The constructor should ensure that all hazardous products brought into the employer's workplace by the constructor are labelled.
3. The constructor should give the employer the SDSs for all hazardous products that the constructor brings into the employer's workplace.
4. The constructor must train his/her own workers respecting the hazardous products used on the construction project, and the hazardous products likely to be encountered in the employer's workplace.

### How does WHMIS apply to construction materials such as sand, gravel or limestone?

The application of WHMIS to materials like sand, gravel, and limestone is a special one. These materials meet the definition of a hazardous product because of their silica content; however, because of their physical size and shape, they are not necessarily hazardous to worker health. For example, aggregate that is piled on a construction site or used in road building is not likely to endanger worker health or safety. On the other hand, aggregate that is being crushed and sized for use as an abrasive cleaner could endanger worker health because of the dust released during the processing of the aggregate.

Neither the federal nor provincial WHMIS legislation specifically address materials such as sand or gravel, which may or may not be hazardous depending upon the circumstances. It is therefore the policy of the regulators that the WHMIS requirements (labels, SDSs and training) will apply only when such materials are

packaged or processed for a specific purpose as described above, and there is a likelihood of endangerment to worker health or safety.

# Confidential business information

Confidential business information (CBI) generally refers to technical information on a product or its manufacturing process that has economic value and that is usually known only to the producer. CBI is protected under WHMIS. Both suppliers and employers can file a claim to be exempted from disclosing information normally required on a label or SDS for a hazardous product if that information is considered to be CBI. A claim for exemption must be filed with Health Canada, which assesses its validity and ensures that the label and SDS for a product comply with all requirements for health and safety information. This process balances the worker's right to know about hazardous materials with industry's right to protect CBI.

# CBI legislation

Several acts and regulations have provisions related to the protection of CBI. Relevant federal legislation includes the *Hazardous Products Act* (HPA), the Hazardous Products Regulations (HPR), the *Hazardous Materials Information Review Act* (HMIRA), the Hazardous Materials Information Review Regulations (HMIRR) and the *Hazardous Materials Information Review Act* Appeal Board Procedures Regulations.

In Ontario, the *Occupational Health and Safety Act* and the WHMIS Regulation also include provisions governing the protection of CBI. The OHSA provides:

- that an employer may file a claim for exemption from disclosing information normally required on a label or SDS (section 40);
- that an employer's claim for exemption is to be determined according to processes set out in the federal HMIRA (subsection 40(3));
- for an employer, worker, or trade union to appeal a determination made under the HMIRA (subsection 40(4));
- an exemption from disclosure while the claim is being determined and a three-year exemption from disclosure if a claim is found to be valid (subsection 40(6)); and,
- for the protection of CBI obtained by a Ministry of Labour employee or other person in specific circumstances (section 40.1).

The WHMIS Regulation prescribes:

- the types of information for which an employer may file a claim for exemption; and,
- specific information that must be disclosed on the label and SDS of a hazardous product that is the subject of an employer's claim for exemption.

This section of the guide is an overview of provisions in the OHSA and WHMIS Regulation governing CBI. An employer wishing to file a claim for exemption should contact Health Canada for detailed technical guidance on:

- obtaining, completing and submitting a claim form;
- information required to support the claim;
- fees payable for filing a claim or an appeal;
- preparing a compliant label and SDS; and
- appealing a determination related to a claim.

# Employer's claim for exemption

## What types of information can an employer claim as CBI?

An employer may file a claim for exemption from disclosing the following types of information on either a label or SDS (subsection 19(1), WHMIS Reg.):

1. In the case of a material or substance that is a hazardous product:
    a. the chemical name of the material or substance,
    b. the Chemical Abstracts Service (CAS) registry number, or any other unique identifier of the material or substance, and
    c. the chemical name of any impurity, stabilizing solvent or stabilizing additive in the material or substance that:
    - is classified in a category or subcategory of a hazard class under the *Hazardous Products Act*, and
    - contributes to the classification of the material or substance in the hazard class;
2. In the case of an ingredient that is in a mixture that is a hazardous product:
    a. the chemical name of the ingredient,
    b. the CAS registry number or any other unique identifier of the ingredient, and
    c. the concentration or concentration range of the ingredient;
3. For a hazardous product that is either a material, substance or mixture, the name of any toxicological study that identifies either the material or substance, or any ingredient in the mixture;
4. The product identifier of a hazardous product (i.e. its chemical name, common name, generic name, trade name or brand name);
5. Information about a hazardous product, other than the product identifier, that could be used to identify it; and,
6. Information that could be used to identify a supplier of a hazardous product.

**Note:** Under federal law, a supplier may file a claim for exemption from disclosing the information described in 1-3 above (subsection 11(1), HMIRA).

Health and safety information about a hazardous product can never be withheld from disclosure on a label or SDS (subsection 19(2), WHMIS Reg.).

## If a claim is filed

An employer who has filed a claim with Health Canada may use the product for which the claim has been filed and may withhold the information that is the subject of the claim pending a final determination, but the SDS and, if applicable, the label or container of the product must show:

a. the date the claim for exemption was filed, and
b. the registry number assigned to the claim by Health Canada under the HMIRA (subsection 20(1), WHMIS Reg.).

The filing date and registry number must remain on the SDS or label:

a. for 30 days after the claim is finally determined; or,
b. if an order is issued under the HMIRA in relation to the claim, until the end of the period specified in the order (subsection 20(2), WHMIS Reg.).

## If a claim is granted

If a claim or a portion of a claim for exemption is determined to be valid, the employer must disclose on the SDS and, if applicable, on the label or container of the hazardous product:

a. a statement that an exemption has been granted;
b. the date of the decision granting the exemption; and
c. the registry number assigned to the claim by Health Canada under the HMIRA (subsection 23(1), WHMIS Reg.).

The employer must disclose this information beginning not more than 30 days after the final determination of the claim and ending on the last day of the exemption period (subsection 23(2), WHMIS Reg.). Under the OHSA, if a claim is granted, CBI is exempt from disclosure from the time a claim is filed until it is finally determined and for three years after that (subsection 40(6), OHSA).

Health Canada maintains a list of active claims on its website.

## If a claim is rejected

If a claim for exemption is rejected in whole or in part, the employer has three options:

1. Accept the decision and revise the SDS, and where applicable the label, to include the CBI that was the subject of the claim;
2. Appeal the decision; or
3. Withdraw the product from the workplace without revealing the information considered to be confidential.

## Special SDS requirements

If an employer produces a hazardous product for use in its own workplace, and files a claim for exemption from disclosing CBI, the employer may be required to disclose prescribed information on the SDS in place of the information that is the subject of the claim. The following rules apply with respect to the SDS (section 21, WHMIS Reg.):

- If the hazardous product is a material or substance and the employer wishes to withhold:
    - the chemical name of the material,
    - its CAS registry number or other unique identifier, and
    - the chemical name of any corresponding impurity, stabilizing solvent or stabilizing additive,

  the employer's SDS must disclose the generic chemical name of the material in place of its actual identity (subparagraph 1.i. of section 21, WHMIS Reg.).
- If the hazardous product is a mixture and the employer wishes to protect information that would identify its ingredients — i.e. the chemical name of any ingredient and the CAS registry number or other unique identifier of any ingredient — the employer's SDS must include the generic chemical name of each ingredient that is the subject of the claim that:
    - individually is classified in a category or subcategory of a hazard class listed in the HPA, and that is present above the designated concentration for that category or subcategory; or
    - is present at a concentration that results in the mixture being classified in a category or subcategory of a hazard class (subparagraph 1.ii. of section 21, WHMIS Reg.).
- If the product identifier (i.e. chemical name, common name, generic name, trade name or brand name) is the subject of the claim, the SDS must include the code name or code number of the hazardous product in place of the product identifier (paragraph 2 of section 21, WHMIS Reg.).

## Disclosure of CBI in a medical emergency

In a medical emergency, an employer must provide information about a hazardous product, including CBI, to a medical professional who asks for it in order to make a diagnosis or give treatment (section 24, WHMIS Reg. and clause 25(2)(b), OHSA).

## Disclosure of CBI to government officials

The federal HMIRA permits CBI obtained from a supplier or employer to be disclosed to certain government officials for the purpose of administering or enforcing prescribed legislation. Specifically, CBI may be given to a provincial government official for the purpose of enforcing occupational health and safety laws if, under the laws of that province, the CBI is protected (clause 46(2)(e), HMIRA).

In a workplace in Ontario where a chemical is used whose identity has been withheld from labels and safety data sheets because it is the subject of a claim for exemption and Regulation 833, Control of Exposure to Biological or Chemical Agents, sets a limit for exposure to that chemical, a Ministry of Labour inspector would need to know the identity of the chemical to ensure worker exposure to it is properly controlled. The inspector could obtain the identity of the chemical from a person acting under the authority of the HMIRA.

Under the OHSA, a Ministry of Labour employee who obtains CBI from a person acting under the authority of the HMIRA is prohibited from disclosing that information, except to another MOL employee, for the purpose of enforcing the OHSA; or, to a medical professional who asks for the information to make a diagnosis or provide treatment in an emergency (section 40.1, OHSA).

# Appeals

The OHSA provides for an employer, any worker of the employer, or a trade union representing the employer's workers to appeal a determination made under the federal HMIRA in relation to a claim for exemption. The appeal must be filed and determined in accordance with processes set out under the HMIRA (subsection 40(4), OHSA). An appeal can relate to a decision or order on the validity of a claim for exemption, or to a decision, order or undertaking related to the compliance of a label or SDS associated with a claim.

# Appendix: Employer compliance checklist

There are many tasks facing the employer trying to comply with WHMIS. The following checklist will help the employer to identify these tasks. The list contains questions that can be answered either "yes" or "no." A question answered with a "no" may identify an area requiring attention. Please note that not all questions may be relevant to all employers.

# General

1. Do you know which materials in your workplace are classified as hazardous products under WHMIS?
2. Have you assessed and classified all biological and chemical agents produced in-house for your own use against the criteria in Parts 2, 7 and 8 of the *Hazardous Products Regulations* to see which ones are hazardous products?
3. Have you written out this assessment and made a copy available to workers and the joint health and safety committee, health and safety representative, if any, or a representative of the workers if there is no joint committee or health and safety representative?

# Labelling and identification

1. Do all containers of hazardous products received from a supplier have a supplier label?
2. Have you made and attached workplace labels to hazardous products:
    a. produced in-house for use in your own workplace?
    b. decanted from the original supplier container into another container?
3. Have you attached a supplier label to any containers of a hazardous product received as a bulk shipment?
4. Have you posted a placard with workplace label information for any hazardous product not in a container?
5. Have you provided identification for hazardous products (except intermediates) that are in pipes, process or reaction vessels, tank cars, etc.?
6. Is all hazardous waste that is acquired or generated on site safely stored and identified?
7. Do you have a process in place to update supplier and workplace labels with significant new data about a hazardous product?

# Safety data sheets (SDSs)

1. Do you have current SDSs for hazardous products received from a supplier?
2. Have you prepared a SDS that meets the requirements for a supplier SDS for all hazardous products that you produce for use in your own workplace?
3. Do you have a process in place to update SDSs with significant new data about a hazardous product?
4. Are copies of SDSs readily available to workers? Do workers know how to access SDSs that are in electronic format?
5. Does the joint health and safety committee or health and safety representative, if any, or a representative of the workers if there is no joint committee or health and safety representative have copies of all SDSs?

# Worker education

1. Have you identified all workers required to receive WHMIS training and instruction?
2. Have workers been trained on the topics set out in section 7 of the WHMIS Regulation? Was the information provided to workers tailored to circumstances and conditions in your workplace?
3. Did you consult the joint health and safety committee or a health and safety representative about the development and delivery of the worker training?
4. Do workers understand the significance of any modes of identification (e.g. colour coding, pictures, etc.) in the workplace, where these have been used in place of labels on hazardous products?
5. Do you have a process to verify that workers have understood their training and know how to safely handle any hazardous products they use? How to find SDSs? What to do in an emergency?
6. Do you have a process for reviewing the worker education program at least once a year; or, whenever a new hazardous product enters the workplace; or when new information about a hazardous product becomes available? Does your review process include the joint health and safety committee or a health and safety representative?

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# Footnotes

- [1] ^ These hazard classes are part of WHMIS 2015 but are not part of the GHS.
- [2] ^ These hazard classes are part of WHMIS 2015 but are not part of the GHS.
- [3] ^ These hazard classes are part of WHMIS 2015 but are not part of the GHS.
- [4] ^ These hazard classes are part of WHMIS 2015 but are not part of the GHS.
- [5] ^ These hazard classes are part of WHMIS 2015 but are not part of the GHS.
- [6] ^ These hazard classes are part of WHMIS 2015 but are not part of the GHS.

Public Services Health & Safety Association™

Your Health. Your Safety. Our Commitment.

# Guide to OHSA, Guide to JHSC & Guide to WHMIS

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