



Guide to the Occupational Health and Safety Act



WCB Information Series publication

The guide to the Occupational Health and Safety Act provides individuals with the opportunity to gain practical knowledge of the OH&S Act. It enables employers and workers to become informed about the Act and ensure a safe and healthy workplace. Becoming familiar with the legislation is essential to safe work practices and is the responsibility of all employers and workers.

This guide is intended to be used in conjunction with the Act and in no way replaces it. Please refer to the Act for a more detailed explanation or clarification.

PURPOSE OF THE ACT

The purpose of the Act and Regulations is to set a minimum standard of occupational health and safety for Island workers. The Act sets out general principles for every workplace.

The Internal Responsibility System

The philosophical foundation of the Occupational Health and Safety Act is the Internal Responsibility System.

This means that the people doing the work are responsible for creating a healthy and safe workplace. This includes a variety of stakeholders such as management, employers, workers and service providers.

This philosophy provides a framework for clear communication about health and safety issues established through policies and programs. Safety representatives and joint occupational health and safety committees (JOSH) assist with safety policies and safety programs. Their purpose is to ensure good communication, training and awareness of safety hazards.

The role of the Occupational Health and Safety Division of the Workers Compensation Board is to supplement the Internal Responsibility System by establishing and clarifying the responsibilities of all parties, to support them in maintaining healthy, safe workplaces and to intervene when responsibilities are not carried out to the standards specified by the Act.

Definitions

Definitions are included in the Act to clarify the meaning of the term used as it is applied in the Act. Consult the Act for the exact definitions.

Section 2 & 4

Application and Administration of the Act

The Act applies to all workplaces on Prince Edward Island within the legislative jurisdictions of the Province.

The Board appoints a Director of Occupational Health and Safety and staff who administer the Act through education, inspection and surveillance of workplaces to maintain standards for the health and safety of workers. The Workers Compensation Board is responsible for developing and maintaining reasonable standards for the protection of the occupational health and safety of all workers through inspections, workplace injury or fatality investigations, education and research.

The Workers Compensation Board has its main office in Charlottetown with a satellite office in Summerside.

Section 7 & 8

Powers of An Officer

- Officers may enter any workplace at any reasonable time for purposes relating to the Act without giving notice.
- Officers may conduct investigations, request records, copy documents, and take photographs or samples.
- They may also require an employer to produce a written record of information such as repairs, inspections, or required training.
- Officers may question the employer or workers and be accompanied by the employer or a representative during the inspection.
- Orders may be issued verbally or in writing on violations of the Act or Regulations.
- If necessary, officers may bring an expert with them. For example, an air quality expert if there is a problem with ventilation.

Responsibilities of an Officer

Officers are responsible for insuring that the workplaces they inspect are following the health and safety standards set by the OHS Act and Regulations.

Officers are obligated to leave a written report after inspecting a workplace. If the Act or Regulations has not been followed, the section of the Regulations that has been contravened will be indicated on the order section of the report. If an officer removes items from the workplace as part of an investigation, the officer is responsible for the return of these items provided they have not been destroyed during testing.

If a workplace is in a home, the officer may enter the part of the home being used as a workplace with the consent of the owner or (in rare occasions) if necessary, with a warrant.

When an OH&S officer conducts an inspection of a workplace, an employer representative will accompany the officer. An opportunity will be provided for a committee member representing workers to be present during the inspection. If there is no committee or representative, the officer will consult with workers in general about the occupational health and safety in their workplace.

Orders and Reports

When an officer has completed an inspection of a workplace, the officer will leave a written report of what was discussed and noted during the inspection. The report must be posted and a copy given to the health and safety committee or representative.

Orders are issued by an officer when the officer determines that the workplace does not meet the standard of the Act or Regulations.

An officer who finds that a workplace does not meet the minimum standards of the Act or Regulations will attempt to determine the reason, so the problem can be corrected. The order will include the text of the relevant section of the Act or Regulation and the nature of the contravention. The employer is given a specified period of time to remedy the violation and comply with the order.

Officers have the authority to write orders under other legislative Acts such as the Smoke Free Places Act.

Section 8, 9, 10 & 11

Stop Work Orders

A Stop Work Order is issued when the officer finds a situation where workers are in immediate danger. The process, machine, place or activity must be stopped until the problem is corrected and the order is withdrawn by the officer.

If the danger can be isolated, the officer can order that the particular operation, process, room or building be cleared of workers and barricaded until the danger is removed.

The employer must post a notice or copy of the Stop Work Order which can be removed only by the officer or someone the officer has authorized to remove it.

A committee or representative shall receive a copy of the Stop Work Order. If the Order is written as a result of a complaint, the complainant is entitled to a copy as well.

If an officer isolates an area with a Stop Work Order, the employer or designate can allow access only for the purpose of removing the hazard and only when the person is protected.

If a Stop Work Order is violated, a court injunction can be obtained and the violator may be charged.

If an employer or someone the employer designates does not agree with the Order, they may appeal to the Director. The appeal may be made verbally or in writing, but if the Director requests, the appeal may need to be specified in writing. The appeal will be heard as soon as possible. The Director, the employer, the officer who issued the Order and anyone else the Director believes should be involved will be requested to attend.

Upon the conclusion of the appeal, the Director may:

- Affirm the order;
- Rescind the order; or
- Make a new order based on his or her findings.

Anyone wishing to appeal a Director's decision must do so in writing to the Workers Compensation Board within thirty days. The Board will appoint an arbitrator to hold a hearing as soon as possible where the Director and the person appealing are entitled to make representation. The arbitrator has the power of a commissioner under the Public Inquiries Act and their decision is final.

Section 12

Duties of Employers, Workers and Other Persons

Duties of Employers

Employers are responsible to take every reasonable precaution to ensure the health and safety of persons at or near the workplace. Some of the main responsibilities are:

- Employers must provide and maintain all safety devices on all equipment as recommended by the manufacturer or required by the Regulations. The provision of safety equipment and the training on proper use is the duty of the employer.
- The employer is responsible for paying all costs associated with training required to ensure worker health and safety.
- Employers are responsible to ensure that all workers are aware of hazards in the workplace and that they comply with the Act and Regulations.

- As well, they must ensure all workers know how to use safety devices and personal protective equipment appropriately and ensure that all personal protective equipment is fitted properly.

In general, work must be done so workers are not exposed to health or safety hazards. Employers must also co-operate and consult with the health and safety committee or representative where one is required.

Section 13 & 14

Duties of Constructors and Contractors

This clarifies specific responsibilities of contractors and constructors. Contractors or constructors may also be employers.

Constructors are persons contracting to work on a construction site.

Contractors are persons contracting to work at any other workplace.

Contractors and constructors must comply with the Act and take every reasonable precaution to ensure the occupational health and safety of persons at or near the workplace. In addition, contractors and constructors must communicate health and safety information between the employer and the workers. This means that any hazards related to the work or present in the workplace must be communicated to the contractor. Contractors must then inform their workers. For example, persons contracted to clean a building must be informed of any dangerous chemicals they may come in contact with.

Constructors are differentiated in that their workplace is described as a project (see definitions) and they are required to communicate with any safety representatives or committees required on the project and between employers and workers. (A health and safety committee is required on construction projects lasting over three months with over 20 workers on site.) In practice, this outlines the duty of the general constructor on a project and ensures that all workers know the hazards they may be exposed to. This includes hazards not pertaining specifically to their work but that may be around them.

Section 15

Duties of Suppliers

Suppliers are responsible to ensure that anything they sell or lease is in safe working condition and complies with the Act and Regulations when supplied.

If the leasing agreement covers maintenance, the supplier is required to maintain the equipment in safe working condition and ensure it is appropriately inspected. For example, a company renting scaffolding must ensure the parts are in good condition and they have all safety devices in good working condition when it is rented or while it is being used depending on the lease agreement.

For suppliers of controlled chemicals, labeling must be in accordance with the requirements of federal and provincial regulations. This means that any chemicals or controlled products must have the proper labeling and that workplace labels must be current, visible and in accordance with Workplace Hazardous Materials Information System (WHMIS) Regulations.

Section 16

Responsibilities of Workers

Workers share the responsibility for health and safety in the workplace. It is the duty of workers to:

- Take every reasonable precaution to prevent injury to themselves and their co-workers at or near the workplace.
- Wear or use all protective equipment safely.
- Comply with the Act and Regulations, cooperate with safety officials, the employer, other workers, and the safety committee or representative to protect everyone's safety.
- Report unsafe conditions or equipment to a supervisor at or near the workplace. If the problem or concern is not resolved, it should be reported to the committee or safety representative, if there is one. In the absence of a committee or representative, if no action is taken, it may be reported to an officer.

Section 17

Duties of Self-Employed Persons

Self-employed persons have the same duty to take reasonable precautions, co-operate with safety efforts and comply with the Act and Regulations as employers and workers do.

Section 18

Duties of Owners

Owners of buildings and land where work is being conducted are responsible to provide and maintain the property that is used as a workplace so as not to cause a hazard. They must provide any information necessary to ensure workers are not exposed to a hazard. For example, an owner of a mall is responsible to ensure ventilation is adequate, entrances are clear of ice and information is provided about any hazardous chemicals stored on the premises.

Section 19

Duties of Service Providers

Persons providing health and safety services are accountable for the safety and accuracy of that service. They must ensure that the persons using the information understand it.

Section 20

Duties of Architects and Engineers

The intent of this section is to reinforce the duty of architects and engineers to comply with their own Acts, as well identify provisions for safety in their work, in and around the workplaces where they are providing a contract of services.

Section 21

Instruction in the Principles of Health and Safety

Education plays an important role in establishing an improved safety culture. Teaching young people about workplace health and safety before they begin to build their careers gives them essential knowledge to protect themselves throughout their working lives. To this end, the Act now requires private training schools and Holland College to offer, in each course or training program, instruction in the fundamental principles of occupational health and safety.

Section 22

Occupational Health and Safety Advisory Council

The Minister has appointed an Advisory Council of knowledgeable and experienced representatives made up of three (3) workers, three (3) employers, one representative of the general public, the Director of Occupational Health and Safety and the Chair (or a designate) of the Workers Compensation Board. The Council can appoint subcommittees which may include non-committee members. One duty is to review and recommend changes to the Regulations.

The duties of the Council are to advise the Workers Compensation Board on:

1. The administration of the Act and Regulations.
2. The state of workplace safety in the province.
3. Exclusions from the Act.
4. Any other relevant matter.

For details on the Advisory Council consult the Act directly.

Section 23

Safety Program

A Safety Program is required for all employers with 20 or more regularly employed workers regardless of the number of workplaces in which they are employed.

Persons working as a constructor or contractor are not included in the number of workers when determining whether or not a program is required. Also, a construction project itself does not require a program but any constructors on the project with 20 or more workers will require a program. Thus, a project could have 4 or 5 different trades all working under their own policies and programs reflecting the hazards of their own work.

Safety programs are developed by the employer or a designated person. The employer will provide a copy of the program to the safety committee and it is their role to monitor its effectiveness.

Programs must include provision for:

- safety committees or representatives
- workplace inspection
- safe work procedures
- supervision
- record keeping
- workplace injury investigation
- hazard identification
- monitoring of the program
- orientation and training

For more information on how to develop a Safety Program, call WCB at 368-5697, 1-800-237-5049 or consult the Program Guide on the website at www.wcb.pe.ca

Section 24

Occupational Health and Safety Policy

This section requires all employers with over 5 regularly employed workers (of over 12 weeks), regardless of the number of workplaces they might be in, and to develop a written policy regarding health and safety.

- The policy must express the employer's commitment to incident injury prevention.
- It is to be written in consultation with workers and provide details about who is responsible for what role in regards to maintaining a safe, healthy workplace.
- It must include a statement about the responsibilities of the employer, supervisors and workers in keeping the workplace healthy and safe.

- The policy is to be reviewed at least annually.

When determining whether a policy is needed in a workplace, persons working under contract are not to be included in the number of workers.

For details on the Health and Safety policy please consult the Guide to Workplace Health and Safety Policy from the Workers Compensation Board at 368-5697, 1-800-237-5049 or on the website www.wcb.pe.ca

Section 25

Occupational Health & Safety Committee

Safety committees are required at every workplace where 20 or more workers are regularly employed (for over 12 weeks).

Any workplace with over 20 regularly employed workers requires a committee for each workplace. There will be cases where a single employer will have several committees or a combination of committees and representatives to cover all the individual work sites.

This requirement applies to any construction project expected to last over three months.

- Committees must be made up of at least half workers who are not supervisors.
- Worker members are chosen by the workers.
- The committee must meet monthly.
- Minutes must be posted along with contact information.
- Committee work is done on paid time.
- Committees monitor the health and safety program.

For details on the requirements and duties of committees please consult the Guide for Joint Occupational Health and Safety Committees available from the Workers Compensation Board 368-5697, 1-800-237-5049 or on the website at www.wcb.pe.ca.

Section 26

Occupational Health & Safety Representative

Workplaces with between 5 and 19 regularly employed workers must have a safety representative. The representative is to be chosen by the workers, have no supervisory duties, and his or her name must be posted in the workplace. The legislation applying to health and safety representatives is very similar to the requirements for committees with the exception of minutes for formal meetings.

For details on the role and duties of a safety representative, please consult the Guide to Occupational Health and Safety Representatives available from the Workers Compensation Board at 368-5697, 1-800-237-5049 or on the website at www.wcb.pe.ca.

Section 27

Information Responsibilities

This section refers to the requirements for written communication between employers, committees or representatives and Occupational Health and Safety officers.

Any employer receiving a written recommendation from a health and safety committee or representative must respond to the request within 30 days. The response shall indicate acceptance of the recommendation or give reasons for the disagreement with recommendations that the employer does not accept. Details of this are in the Guides to Committees and Representatives.

An employer must post the names of current committee members or representatives in the workplace where all workers have access to it. The health and safety policy, minutes from the committee meetings and a phone number for reporting to an officer must also be posted. The minutes of the meetings must be posted until replaced by the minutes of the next committee meeting.

Reports pertaining to occupational health and safety must be made available to the committee, representative and any worker requesting a copy. This includes any information an officer believes would be important for workers to know. Any posting should remain posted for a minimum of 7 days.

Employers can provide workers with written information on health and safety when posting is not practical.

Section 28 & 29

Refusal to Work

Any worker has the right and the responsibility to refuse work if that worker has reasonable grounds for believing the work is dangerous to them or another worker's health or safety.

If a worker believes a task or situation is dangerous they should:

- Report the concern to the supervisor immediately.
- Go to a safe place but stay at the workplace as they may be assigned to do other work.

The supervisor must investigate the work refusal promptly in the presence of the worker. If the supervisor agrees with the worker and finds the work to be unsafe, the problem must be fixed before any more work can be carried out.

If the supervisor disagrees with the worker and believes the work is safe and the worker still feels unsafe, the worker should:

- Report the concern to the health and safety committee or safety representative if there is one in the workplace.

The supervisor may ask another worker to do the job only if the supervisor informs the other person of the reasons for the refusal.

The committee or representative will investigate the situation promptly. If they agree with the refusal they will recommend that the problem be fixed. If they disagree, the worker will be advised to return to work.

If the worker is still not satisfied, the work refusal may be continued, and Occupational Health and Safety Division of WCB must be called. If the time is not in normal working hours use the 24 hour emergency number (902) 628-7513.

Provided the above steps have been followed, an officer will investigate the concern and will issue an order to the employer to correct the situation or advise the worker to return to work.

A worker's right to refuse is protected under the law from discriminatory action to the point where they are advised to return to work by the officer.

Section 32

Toxic Substances

Employers must provide workers with a list of, and information about, the safe use and handling of all controlled chemicals, and biological or physical agents used, handled, produced or otherwise present at the workplace.

The information must be current, available to workers and the Occupational Health and Safety officer, and include:

- The ingredients and their common names;
- The composition and the properties;
- The toxicological effects;
- The effects of exposure from contact, inhalation or ingestion;
- The protective measures used or to be used in respect to the agent;
- Emergency measures to be used with respect to the specific agent;
- Proper procedures for use, storage, transport and disposal of the agent.

Section 33

Medical Exam

The Director may arrange, with the consent of the worker, to have a worker examined by a medical practitioner to determine whether the worker is suffering from an occupational disease. This section states that the employer may not change the employment status of the worker as a result of the exam and that the worker must be paid for time required for the exam if it can be scheduled during working hours. The report must be made available to the Director upon request.

MISCELLANEOUS

Section 34

Code of Practice

A code of practice is a standard set by an industry to ensure the health and safety of its workers. It lays out in detail how a work process is to be done so workers can perform the job with minimal risk.

The Director may, in response to a hazard or workplace injury in a particular industry request that a code of practice be developed. When a code has been issued at the direction of the Director it must be published in the Royal Gazette. The Gazette is published regularly and contains notification of any legislative changes and issues of law.

The code of practice is not itself a law, however in cases where a prosecution has resulted from a breach of the Act or Regulations, the code may be used as evidence of correct procedure.

Section 36

Reporting of Workplace Injuries

The employer must ensure that serious injuries are reported in writing, by the fastest means possible, to the Worker Compensation Board within 24 hours.

A serious injury is defined as an injury serious enough to:

- Cause or nearly cause a fatality;
- Result in substantial loss of blood;
- Cause an amputation of a leg, arm, hand or foot;
- Cause burns to a major portion of the body or;
- Cause the loss of sight in one eye;
- Suffer a loss of a limb;
- Cause a fracture;

All serious injuries must be reported to safety committees or safety representatives if the workplace has one.

It is an offence to disturb the scene of a workplace incident except to attend to injured workers or to prevent further injury or damage to property until WCB has investigated the accident.

The Workers Compensation Board has an emergency 24 hour response number and an officer is always on call to respond to a serious workplace injury or fatality.

24 hour Emergency Number (902) 628-7513

Section 37

Reporting of Explosions

All accidental explosions, regardless of injuries, must be reported in writing to the Director of Occupational Health and Safety.

Section 38

Board of Inquiry

The Workers Compensation Board may, when it considers it in the public interest to do so, by order appoint a Board of Inquiry of one or more persons to look into –

(a) any matter concerning the occupational health and safety of workers employed:

- at a particular workplace;
- by a particular employer or group of employers;
- in an industry; or

(b) the circumstances surrounding, and the causes of, an accident.

A person appointed to a Board of Inquiry under this section has all the powers of a commissioner appointed under the Public Inquiries Act. The Board of Inquiry may include in its report, recommendations to the Workers Compensation Board with respect to remedial action.

Section 39

Confidentiality

Officers and any persons assisting them in a workplace inquiry are bound to confidentiality.

Section 40

Copies of Reports

Copies of Occupational Health & Safety reports and orders may be released to a purchaser who has entered into an agreement to buy a workplace provided a written request is received from the owner. Payment of a fee may be required.

Section 41

Liability

The Director, officers and persons delegated to carry out a function under this Act are protected from legal action in their performance, done in good faith, of their duties.

Section 42

Obstruction of Officers

It is illegal to interfere with, obstruct or attempt to hinder an officer from performing his or her duties. It is also an offence to knowingly give false information to a safety committee, safety representative or an officer or to interfere with monitoring equipment.

Section 43

Convictions and Fines

Any person who does not comply with the Act and Regulations or an Order given by an officer is guilty of an offence. If convicted they are liable to a fine of up to \$250,000 or a term of imprisonment not exceeding one month, or to both. Each day the offence continues may result in a \$5,000 fine.

Section 44

Additional Penalties

In some cases, the court may order that the offender:

- Publish the facts relating to the offence. Alternately, the Director may publish the facts.
- Pay the Workers Compensation Board an amount to be used by the Board for public education to help prevent a recurrence of this accident in the future. This is considered a debt owed to the Board and the Supreme Court may recover the cost if necessary.
- Provide the Director with information around the activities to help educate to prevent a recurrence .
- Direct the offender to perform community service.
- Direct the offender to provide security for payment of the above orders.
- Impose any other conditions the court considers appropriate.

The total amount payable will not exceed maximum amounts payable under Section 43.

Section 45

Availability of this Act

Every owner, constructor or employer must keep a copy of the Act and Regulations and post all notices and reports as required by the Act.

Section 46

Regulations

The Workers Compensation Board may make Regulations, with approval of the Lieutenant Governor in Council. Regulations are specific and set a minimum standard of safety for all workplaces and work processes. A Regulation can be made exempting a workplace or type of work from the Act or the Regulations.

Section 47

Transitional Requirements

This section of the Act ensures that any appointments, orders, policies or decisions made under the previous Act still apply and are carried over into the new Act.



14 Weymouth Street, P.O. Box 757
Charlottetown, Prince Edward Island C1A 7L7

Telephone: 902-368-5680
Toll Free in Atlantic Canada: 1-800-237-5049
Fax: 902-368-5705
Website: www.wcb.pe.ca