



# **OCCUPATIONAL HEALTH & SAFETY SYSTEM REVIEW**

A SUBMISSION BY THE ALBERTA UNION OF PROVINCIAL EMPLOYEES

MONDAY, OCTOBER 16, 2017



## SUMMARY

A thorough and comprehensive review of Alberta's Occupational Health and Safety (OHS) legislation, including the Act, Regulations and Code are long over due. The current language found within OHS legislation, along with its application and lack of enforcement, has rendered worker safety as a low priority. While the OHS Act, Regulations and Code were formed to protect and promote workers' rights when it comes to their health and safety, employers have found ways around the promotion of these rights, and have found ways to place business plans and profits ahead of workers' health and safety. While the current review is targeted primarily at the OHS Act, we strongly recommend and encourage a review of the OHS Regulations and Code as well.

Alberta's Occupational Health and Safety system has not had a comprehensive review since 1976. Much of the language is out-dated, non-current, and not in favour of workers' rights to safety on the worksite. OHS legislation should routinely and consistently be reviewed and improved to place the rights of workers at the forefront, ahead of profits. However, without proper and strict enforcement, any legislation we have or change to, is rendered useless. Alberta must commit to not only the OHS system review, but also a full review of resources to assist with enforcing the laws that govern workers health and safety.

The Alberta Union of Provincial Employees (AUPE), being the representing Union for over 90,000 workers, is well positioned to advocate for workers' health and safety. We hear and see on a daily basis the importance of proper OHS legislation, and how employers are able to manipulate the current language. For over 40 years, AUPE has advocated for significant changes to Alberta's OHS legislation and submit the following for review.

### **OCCUPATIONAL HEALTH AND SAFETY ACT**

**Preamble:** The Act requires a well thought out preamble that places the emphasis on workers' health and safety and removes any potential ambiguity of the language, making the intent of the language very clear- promoting workers' rights to health and safety.

**Section 2 - General Duty Provision:** Section 2(1)(i) and (ii) should be replaced by language similar to: "Every employer shall take every precaution reasonable in the circumstances for the protection of a worker." As well, we would like to see additional duties on employers defining their obligations to workers.

**Definition of Supervisor:** The Act should include a definition "supervisor," as well as listing the duties of a supervisor as it relates to OHS obligations. Supervisors should be required to have formal training in OHS as they are the go-to for many workers at worksites.

**Section 6 - Occupational Health and Safety Council:** The Act should require equal representation on the OHS Council including labour groups. As well, all members should have OHS experience/education, and a full review of current policies governing the Council should be done.

**Section 8 - Inspection:** The Act should expand this language to include 24/7 operations, and the need for inspection at all hours. OHS Officers should also have increased authority during inspections, including such things as proper hazard assessments and controls and requiring employers to apply proper control in circumstances. Occupational Hygienists and Ergonomists should also be included in inspections and investigations.

**Section 18 - Serious Injuries and Accidents:** The Act should be amended to require notice for any injury requiring hospital treatment. As well, copies of reports require for investigation should be given to affected/injured workers.

**Section 28 - Exchange of Information:** The Act should allow a closer relation between the Minister of Labour and the Workers' Compensation Board. This would aid in identification of worksites that may be problematic. Similar to the British Columbia approach.

**Section 31 - Joint Work Site Health and Safety Committee:** The Act should require mandatory Joint Work Site Health and Safety Committees for all worksites or employers with over 20 workers. As well, for worksites/employers with less than 20 workers, allowing the workers to select an OHS representative to champion health and safety concerns. Committees should also have an active role for investigations and should receive any and all reports as a result of workplace incidents.

**Section 35 - Existence of Imminent Danger:** The Act should strengthen the right to refuse, and remove the word "imminent." The right to refuse unsafe work should not be complicated, and should place workers rights ahead of dangerous tasks.

**Section 36 - Where Disciplinary Action Prohibited:** The Act should include a prohibition on any acts of discipline, including informal penalties and acts of coercion.

## **OCCUPATIONAL HEALTH AND SAFETY REGULATIONS**

**Section 6 - Notifiable Diseases:** The Regulations should, following a review of current diseases, amend to included all current diseases and update the list of which ones require notice.

**Section 8 - Critical Documents:** The Regulations should require employers to make all workers aware of all reports, and not just have them “readily available.”

**Section 13 - General Protection of Workers:** The Regulations should strengthen the definition of “competency” and requirements for determining competency. Further obligations on employers to provide requisite education/training to workers and allowing OHS Officers to assess competency of workers. A worker’s right to refuse should be enabled where they feel incompetent due to the employer’s failings.

## **OCCUPATIONAL HEALTH AND SAFETY CODE**

**Part 2 - Hazard Assessment, Elimination and Control:** The Code should strengthen the hazard assessment process and required elimination and control to protect workers. Worker participation in hazard assessment should be 60-75%; as well assessments and controls should be reviewed not less than once per year. All workers should be required to be informed, by the employer, of hazards and controls used. Inclusion of a worker’s mental health should also be considered when conducting hazard assessments.

**Part 4 - Chemical Hazards, Biological Hazards and Harmful Substances:** The Code should be updated and use the American Conference of Governmental Industrial Hygienists to establish Occupational Exposure Limits (OEL). There should be a consistent review of all OEL. Illicit drugs such as Fentanyl and Carfentanyl should be considered and included under Part 4.

**Part 7 - Emergency Preparedness and Response:** The Code should require training exercises for any response plan to be practised not less than once per year for all workers.

**Part 14 - Lifting and Handling Loads:** The Code should review and strengthen language as it relates to musculoskeletal injuries and ergonomics at the workplace. Special attention to workers that must lift and handle patients, residents and clients, and the unpredictable movements of individuals.

**Part 27 - Violence:** The Code should provide more stringent requirements to prevent violence to workers, and should include psychological violence including harassment and bullying. Domestic violence should also be included as a workplace health and safety issue.

**Part 28 - Working Alone:** The Code should be reviewed and updated to include increased protection for workers who work alone. Late night operations requires attention, as does industries where workers are working alone with clientele, such as health care workers who are in a room alone with a patient or resident.

**Part 29 - Workplace Hazardous Materials Information System (WHMIS):** The Code needs to come in line with WHMIS2015, global harmonization.

**Part 35 - Health Care and Industries with Biological Hazards:** The Code should include more stringent language that pays special attention to the hazards facing health care workers. As well, the language must include cytotoxic medications and specific requirements to keep workers safe and healthy while interacting with these harmful drugs and waste products.

## **GENERAL SUBMISSIONS**

- The Act requires updating to cover domestic workers and the vast array of flexible working options available to workers. Setting a percentage of hours of work and how the legislation applies to these workers is vital.
- Inclusion of Union representative into the Act, defining our ability to represent workers, and our right to be involved in inspections and investigation affecting our membership.
- The Act should include support to workers who wish to appeal decision to the Occupational Health and Safety Council. Currently workers do not have assistance, and a system similar to the WCB Appeals Commission would assist in placing workers rights at the forefront.
- Stricter enforcement of OHS violations including criminal prosecution when serious injury or death occurs. Since Bill C-45 was enacted in 2004 Alberta has not prosecuted any offences of a criminal nature.
- Young workers must be included into the Act and given special attention. Young workers are among the highest injury rates, and it is long overdue to provide specific requirements to this group.
- Alberta Labour requires increased resources to assist in not only enforcement of OHS legislation and requirements, but to also assist in educating.
- Post Traumatic Stress Disorder (PTSD) presumptive inclusion should include all occupations that require a worker to be a primary care or service provider. This would include occupations such as, but not limited to correctional workers, social workers, nurses, and judicial clerks.



**SUBMISSIONS &  
RECOMMENDATIONS**

## PREAMBLE

The current OHS Act does not have a preamble, or any guiding principles. Without a properly worded preamble, much of the language can, and often is, interpreted to lessen protections for workers. While OHS legislation is meant to provide a means of protection for all workers, the intent has been lost. A specific and well-thought preamble would place the emphasis on worker health and safety, as it would remove any misinterpretation/misapplication. It should be clear that the language within legislation is meant to promote the health and safety of the worker.

As an example, Manitoba has the following, as it's guiding principles, explaining the purpose of the Manitoba OHS Act:

*General objects and purposes*

*2(1) The objects and purposes of the Act are*

- (a) to secure workers and self-employed persons from risks to their safety, health and welfare arising out of, or in connection with, activities in their workplaces; and*
- (b) to protect other persons from risks to their safety and health arising out of, or in connection with, activities in workplaces.*

*Specific objects and purposes*

*2(2) Without limiting the generality of subsection (1), the objects and purposes of this Act include*

- (a) the promotion and maintenance of the highest degree of physical, mental and social well-being of workers;*
- (b) the prevention among workers of ill health caused by their working conditions;*
- (c) the protection of workers in their employment from factors promoting ill health;*
- (d) the placing and maintenance of workers in an occupational environment adapted to their physiological and psychological condition; and*
- (e) the promotion of workers' rights*
  - (i) to know about safety and health hazards in their workplaces,*
  - (ii) to participate in safety and health activities at their workplaces,*
  - (iii) to refuse dangerous work, and*
  - (iv) to work without being subject to discriminatory action.*

## ACT

### Section 2 - General Duty Provision

We are of the opinion that the use of "reasonably practicable" has been misinterpreted and misapplied by employers. While the intent of the language is meant to place the duty upon employers to implement any foreseeable precautions necessary for the health and safety of all workers, the word "practicable" is often used as an "out" by employers. Some employers have taken advantage of the word "practicable," meaning they get to decide if they have the monetary resources, thus placing the debate of money over safety.

As a comparison, Ontario has the following language that cites the employers' obligations to workers:

*Section 25(2)(h)- take every precaution reasonable in the circumstances for the protection of a worker*

We would also encourage expanding the obligations of employers. Ontario provides a good example as how to set out the necessary language. Section 25 (2) of the Ontario Occupational Health and Safety Act states the duties on employers as the following:

*Without limiting the strict duty imposed by subsection (1), an employer shall,*

- (a) provide information, instruction and supervision to a worker to protect the health or safety of the worker;*
- (b) in a medical emergency for the purpose of diagnosis or treatment, provide, upon request, information in the possession of the employer, including confidential business information, to a legally qualified medical practitioner and to such other persons as may be prescribed;*
- (c) when appointing a supervisor, appoint a competent person;*

- (d) *acquaint a worker or a person in authority over a worker with any hazard in the work and in the handling, storage, use, disposal and transport of any article, device, equipment or a biological, chemical or physical agent;*
- (e) *afford assistance and co-operation to a committee and a health and safety representative in the carrying out by the committee and the health and safety representative of any of their functions;*
- (f) *only employ in or about a workplace a person over such age as may be prescribed;*
- (g) *not knowingly permit a person who is under such age as may be prescribed to be in or about a workplace;*
- (h) *take every precaution reasonable in the circumstances for the protection of a worker;*
- (i) *post, in the workplace, a copy of this Act and any explanatory material prepared by the Ministry, both in English and the majority language of the workplace, outlining the rights, responsibilities and duties of workers;*
- (j) *prepare and review at least annually a written occupational health and safety policy and develop and maintain a program to implement that policy;*
- (k) *post at a conspicuous location in the workplace a copy of the occupational health and safety policy;*
- (l) *provide to the committee or to a health and safety representative the results of a report respecting occupational health and safety that is in the employer's possession and, if that report is in writing, a copy of the portions of the report that concern occupational health and safety; and*
- (m) *advise workers of the results of a report referred to in clause (l) and, if the report is in writing, make available to them on request copies of the portions of the report that concern occupational health and safety. R.S.O. 1990, c. O.1, s. 25 (2).*

### **Definition of Supervisor**

The current OHS Act does not define "supervisor" and who that definition would apply to. "Supervisor" needs to be properly defined within definitions. Both Manitoba and Ontario define supervisor as:

*"supervisor" means a person who has charge of a workplace or authority over a worker*

By placing a definition on who constitutes a supervisor, it will make it clearer as to who has the responsibility and obligations. Furthermore, the OHS Act should place obligations on a designated supervisor. Manitoba and Ontario have similar language defining the obligations for supervisors.

Ontario places the following duties upon supervisors under Section 27 (1) and (2) of Ontario Health and Safety Act:

#### **Duties of supervisor**

*27. (1) A supervisor shall ensure that a worker,*

- (a) *works in the manner and with the protective devices, measures and procedures required by this Act and the regulations; and*
- (b) *uses or wears the equipment, protective devices or clothing that the worker's employer requires to be used or worn.*

#### **Additional duties of supervisor**

*(2) Without limiting the duty imposed by subsection (1), a supervisor shall,*

- (a) *advise a worker of the existence of any potential or actual danger to the health or safety of the worker of which the supervisor is aware;*
- (b) *where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for protection of the worker; and*
- (c) *take every precaution reasonable in the circumstances for the protection of a worker. R.S.O. 1990, c. O.1, s. 27.*

Supervisors should also be required to have some form of formal training related to OHS. Many times, supervisors are the “go-to” for workers who have questions or concerns, and without proper knowledge in OHS, the supervisor does not provide the proper advice for the situation. Further to the above, we would like to see the inclusion that a supervisor be responsible to provide a harassment free worksite. Saskatchewan OHS Act 3.1(c) has the following language:

*ensure, insofar as is reasonably practicable, that all workers under the supervisor’s direct oversight and direction are not exposed to harassment at the place of employment;*

As well, many other jurisdictions have a “Duty to Provide Information” clause that aides and assists in providing workers knowledgeable information about health and safety related matters. This is important in today’s workplaces given the amount of contract work and workers. Here is an example from Manitoba on their language:

**Duty to provide required information**

**Definition: “required information”**

**7.5(1)** *In this section, “required information” means any information*

- (a) that may affect the safety and health of a person at a workplace;*
- (b) that is necessary to identify and control any existing or potential hazards with respect to a workplace or any process, procedure or biological or chemical substance used at a workplace; or*
- (c) prescribed by regulation as required information.*

Manitoba also has the following language to specifically deal with contractors. We recommend that Alberta put in place language that specifically refers to contractors and their obligation under legislation:

**Duties of prime contractors**

**Requirement for prime contractor**

**7(1)** *There shall be a prime contractor for a construction project if more than one employer or self-employed person is involved in work at the construction project site at the same time.*

**Prime contractor for construction project**

**7(2)** *The prime contractor for a construction project is*

- (a) the person who enters into a contract to serve as the prime contractor with the owner of the construction project site; or*
- (b) if there is no contract referred to in clause (a), or if that contract is not in effect, the owner of the construction project site.*

**Duties of prime contractor**

**7(3)** *The prime contractor for a construction project shall*

- (a) ensure, so far as is reasonably practicable, that every person involved in work on the project complies with this Act and the regulations;*
- (b) co-ordinate, organize and oversee the performance of all work at the construction project site and conduct his or her own activities in such a way as to ensure, so far as is reasonably practicable, that no person is exposed to risks to his or her safety or health arising out of, or in connection with activities at the construction project site;*
- (c) co-operate with any other person exercising a duty imposed by this Act or the regulations; and*
- (d) comply with this Act and the regulations.*

**Duties of contractors**

**Duties of contractors**

**7.1** *Every contractor shall*

- (a) ensure, so far as is reasonably practicable,*
  - (i) that every workplace where an employer, employer’s worker or self-employed person works pursuant to a contract with the contractor, and*
  - (ii) that every work process or procedure performed at a workplace by an employer, employer’s worker or self employed person pursuant to a contract with the contractor, that is not in the direct and complete control of that employer or self- employed person does not create a risk to the safety or health of any person;*

- (b) *if the contractor is involved in work on a construction project that has a prime contractor, advise the prime contractor of the name of every employer or self-employed person with whom the contractor has contracted to perform work on the project;*
- (c) *co-operate with any other person exercising a duty imposed by this Act or the regulations; and*
- (d) *comply with this Act and the regulations.*

## **Section 6 - Occupational Health and Safety Council**

The current OHS council, according to the Alberta Labour website consists of four people. While the current language allows up to 12 positions, it is very clear that there is no importance placed upon the OHS Council, or its duties.

Priority and resources must be put into the Council so that it can function without fear of bias, preconceived notion, or reprisals. Of the four members currently appointed to the OHS Council, not one is a representative of labour or a union. The OHS Council should be equally representative of all groups, labour and union included, and that the focus of the council must be on protection of workers and worker health and safety.

The Council and its members should be properly trained in administrative tribunals, Alberta's OHS Act, Regulation and Code, as well be kept up to date in any and all changes to legislation and/or its application. A full review of policies governing the Council should also be conducted to identify any concerns and refocus the Council to focus on protection of workers.

## **Section 8 - Inspection**

Currently, while there is language that indicates OHS officers may inspect a worksite at any reasonable hour, this is not the reality. OHS officers outside of emergencies or imminent danger occurrences do not routinely inspect 24/7 operations during evening and night shift hours. There are a high percentage of work place incidents occurring on evening and night shift hours, and OHS officers need to pay attention to these hazards and incidents that are not found within dayshift hours. We would like to see language that specifically address 24/7 operations, as well the Ministry of Labour must put the necessary resources in place for this to occur.

We would also recommend that where possible, industry specific officers are sent to conduct inspections at various worksites. Currently, OHS officers are not trained specifically to inspect hospital settings, correctional centres, or other specific worksites that present their own unique concerns. By having officers universally trained, but with specific training for different environments, it would allow proper inspections and more detailed enforcement of legislation.

Increase the officers' capabilities and responsibilities when it comes to inspections and enforcement. Currently, officers are not able to critique hazard assessments and force employers to put in place the proper hierarchy of controls. We have understood that officers often are not in agreement with the controls in place to protect the worker, however there is nothing that they can do. It is recommended that officers have the abilities to determine if things like identified controls for hazards (OHS Code- Part 2 Section 9(1)) have been properly identified and applied correctly.

Allow for the inclusion of Occupation Hygienists and Ergonomists when inspections and investigations are being conducted. With ever-increasing numbers in occupational disease and the increase in reported musculoskeletal injuries, specially trained individuals to pay specific attention to these areas would assist in promoting health and safety.

## **Section 18- Serious Injuries and Accidents**

Currently under Section 18, the reporting requirements are out-dated and prevent a lot of injuries or near misses from being reported. The current legislation requires employers to report injuries or accidents that result in death or where an injury or accident results in a worker being admitted to a hospital for more than two days.

There are a lot of significant injuries/accidents that result in worksites that are going unreported because they do not meet the criteria found in Section 18 (2). Employers should be required to report injuries/accidents that result in hospital care, meaning anytime a worker is sent to hospital for treatment, it should be required to be reported.

As well, under Section 18(3), when conducting an investigation into injuries/accidents identified in Section 18(2), there currently is no requirement that the report from the investigation be provided to the actual worker(s) involved in the incident. We would like to see changes that require the employer to provide the workers a copy of the investigation report.

The following is example language from the British Columbia Workers Compensation Act dealing with reporting and investigating. While we would like to see the actual worker receive a copy of the report, this is better language than what we currently have:



**172 Immediate notice of certain accidents**

- (1) An employer must immediately notify the Board of the occurrence of any accident that
- (a) resulted in serious injury to or the death of a worker,
  - (b) involved a major structural failure or collapse of a building, bridge, tower, crane, hoist, temporary construction support system or excavation,
  - (c) involved the major release of a hazardous substance,
  - (c.1) involved a fire or explosion that had a potential for causing serious injury to a worker, or
  - (d) was an incident required by regulation to be reported.
- (2) Except as otherwise directed by an officer of the Board or a peace officer, a person must not disturb the scene of an accident that is reportable under subsection (1) except so far as is necessary to
- (a) attend to persons injured or killed,
  - (b) prevent further injuries or death, or
  - (c) protect property that is endangered as a result of the accident.

**173 Incidents that must be investigated**

- (1) An employer must conduct a preliminary investigation under section 175 and a full investigation under section 176 respecting any accident or other incident that
- (a) is required to be reported by section 172,
  - (b) resulted in injury to a worker requiring medical treatment,
  - (c) did not involve injury to a worker, or involved only minor injury not requiring medical treatment, but had a potential for causing serious injury to a worker, or
  - (d) was an incident required by regulation to be investigated.
- (2) Subsection (1) does not apply in the case of a vehicle accident occurring on a public street or highway.

**174 Investigation process**

- (1) An investigation required under this Division must be carried out by persons knowledgeable about the type of work involved and, if they are reasonably available, with the participation of the employer or a representative of the employer and a worker representative.
- (1.1) For the purposes of subsection (1), the participation of the employer or a representative of the employer and a worker representative includes, but is not limited to, the following activities:
- (a) viewing the scene of the incident with the persons carrying out the investigation;
  - (b) providing advice to the persons carrying out the investigation respecting the methods used to carry out the investigation, the scope of the investigation, or any other aspect of the investigation;
  - (c) other activities, as prescribed by the Board.
- (2) Repealed.
- (3) The employer must make every reasonable effort to have available for interview by a person conducting the investigation, or by an officer, all witnesses to the incident and any other persons whose presence might be necessary for a proper investigation of the incident.
- (4) The employer must record the names, addresses and telephone numbers of persons referred to in subsection (3).

**175 Preliminary investigation, report and follow-up action**

- (1) An employer must, immediately after the occurrence of an incident described in section 173, undertake a preliminary investigation to, as far as possible,
- (a) identify any unsafe conditions, acts or procedures that significantly contributed to the incident, and
  - (b) if unsafe conditions, acts or procedures are identified under paragraph (a) of this subsection, determine the corrective action necessary to prevent, during a full investigation under section 176, the recurrence of similar incidents.
- (2) The employer must ensure that a report of the preliminary investigation is
- (a) prepared in accordance with the policies of the board of directors,

- (b) completed within 48 hours of the occurrence of the incident,
  - (c) provided to the Board on request of the Board, and
  - (d) as soon as practicable after the report is completed, either
    - (i) provided to the joint committee or worker health and safety representative, as applicable, or
    - (ii) if there is no joint committee or worker health and safety representative, posted at the workplace.
- (3) Following the preliminary investigation, the employer must, without undue delay, undertake any corrective action determined to be necessary under subsection (1) (b).
- (4) If the employer takes corrective action under subsection (3), the employer, as soon as practicable, must
- (a) prepare a report of the action taken, and
  - (b) either
    - (i) provide the report to the joint committee or worker health and safety representative, as applicable, or
    - (ii) if there is no joint committee or worker health and safety representative, post the report at the workplace.

**176 Full investigation, report and follow-up action**

- (1) An employer must, immediately after completing a preliminary investigation under section 175, undertake a full investigation to, as far as possible,
- (a) determine the cause or causes of the incident investigated under section 175,
  - (b) identify any unsafe conditions, acts or procedures that significantly contributed to the incident, and
  - (c) if unsafe conditions, acts or procedures are identified under paragraph (b) of this subsection, determine the corrective action necessary to prevent the recurrence of similar incidents.
- (2) The employer must ensure that a report of the full investigation is
- (a) prepared in accordance with the policies of the board of directors,
  - (b) submitted to the Board within 30 days of the occurrence of the incident, and
  - (c) within 30 days of the occurrence of the incident, either,
    - (i) provided to the joint committee or worker health and safety representative, as applicable, or
    - (ii) if there is no joint committee or worker health and safety representative, posted at the workplace.
- (3) The Board may extend the time period, as the Board considers appropriate, for submitting a report under subsection (2)(b) or (c).
- (4) Following the full investigation, the employer must, without undue delay, undertake any corrective action determined to be necessary under subsection (1)(c).
- (5) If the employer takes corrective action under subsection (4), the employer, as soon as practicable, must
- (a) prepare a report of the action taken, and
  - (b) either
    - (i) provide the report to the joint committee or worker health and safety representative, as applicable, or
    - (ii) if there is no joint committee or worker health and safety representative, post the report at the workplace.

**177 Employer or supervisor must not attempt to prevent reporting**

An employer or supervisor must not, by agreement, threat, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer, or a dependant of the worker, from reporting to the Board

- (a) an injury or allegation of injury, whether or not the injury occurred or is compensable under Part 1,
- (b) an illness, whether or not the illness exists or is an occupational disease compensable under Part 1,
- (c) a death, whether or not the death is compensable under Part 1, or
- (d) a hazardous condition or allegation of hazardous condition in any work to which this Part applies.

## **Section 28 - Exchange of Information**

Currently, by Minister order only, can there be an exchange of information from the Workers' Compensation Board and the Minister of Labour.

We view a relationship with WCB and OHS as being vital in identification of many different facets of issues/concerns. An exchange of information would allow problematic worksites/employers to be identified thus allowing more rigorous inspections and/or enforcement. As well, occupational diseases would be properly identified and tracked similarly, as currently they are quite often overlooked. There needs to be an open line of communication between WCB and the connection to OHS. This could work similar to how British Columbia currently operates its relations between OHS and WCB.

## **Section 31 - Joint Work Site Health and Safety Committee**

We encourage and recommend that Alberta proceed to mandatory joint worksite health and safety committees (JWHSC). While unions have long advocated and negotiated the requirements for JWHSC's in collective agreements, non-unionized workers are left vulnerable, unprotected and unheard.

Within the Internal Responsibility System (IRS), which OHS operates under currently, a JWHSC is vital in recognizing and addressing OHS concerns at the worksite. While workers are meant to have a role to play in the IRS, without an avenue to address concerns, their role is diminished or void altogether. Workers in many worksites are left no avenue to address their concerns and have their concerns resolved.

We would recommend that any worksite or employer with more than 20 workers should be required to have a JWHSC. This would place health and safety at a much higher platform, and allow workers who currently are not able to voice their OHS concerns a venue to do so.

For worksites under 20 workers, we would recommend that these worksites "elect" a worker representative from the working group to be a "representative." This would allow these workers a venue to voice concerns and have their issues addressed. It may not be to the same level as a formal JWHSC, however they still deserve a mechanism of addressing their concerns.

While we do have some good language in Part 13 that we could use, when it comes to members, terms of membership, election of worker members, meetings and quorum. The review should look at other jurisdictions such as Ontario for guidance on language to properly establish and function the committees. British Columbia also has some language that deserves attention, specifically in the area of mandatory training for all committee members. We must properly educate the people that will be guiding the principles for health and safety. Without doing so, we would be stripping the committee and its membership of its responsibilities and purpose. Manitoba also has good language that covers a lot of aspects, including mandatory OHS bulletin boards.

Any changes here should also be reflected in Part 13 of the OHS Code.

On top of this, there needs to be inclusion of the committee to any serious worksite injury or incident. A responsibility of any committee should be the review of incidents and the prevention of a same or similar occurrence. Currently, unless provincial OHS officers are called or alerted to an incident, the employer conducts their own investigation. This is often a biased investigation and results in a behaviour based management approach - or what did the worker do wrong. Without a proper non-biased investigation and incident review process, the actual root cause of the incident will go unidentified and presents as another potential incident.

## **Section 35 - Existence of Imminent Danger**

A workers right to refuse unsafe/dangerous work must be the backbone of any OHS legislation. To protect workers with the right to refuse work that may cause personal harm or harm to other workers is the end goal of OHS legislation. However, the current language of "imminent danger," which is defined as a danger not normal for that occupation, is weak and confuses a worker who will err on the side of fulfilling the dangerous task. There are many dangerous tasks that workers perform, and where workers should be refusing due to the significant hazard it presents to the worker, however it does not meet the definition of "imminent danger." While it is a dangerous task, and while a worker is not protected properly, it is deemed normal for that occupation and therefore does not meet the definition of "imminent danger". We insist on the removal of the imminent danger definition, and replace it with language that ensures a workers right to refuse is maintained. Similarly, under the current language found within Section 35(1) (a-c), we insist on the removal of "probable grounds" and instead leave the qualifier as "reasonable." Workers should only have to have reasonable ground to believe their health or safety will be compromised. Any further and more complicated language leads to confusion and weakens the right to refuse.

The right to refuse work is a fundamental right for workers, and we need to have language that places workers right above dangerous jobs. Provided are examples of language that places the right to refuse significantly above the

definition we currently have. With both of these examples, and with any changes, we recommend removing “may” and replacing it with “must”. This reinforces the workers absolute duty and obligation to refuse any work that may present a danger to that worker or other workers at the worksite. Manitoba defines the right to refuse as:

***Right to refuse dangerous work***

*43(1) Subject to this section, a worker may refuse to work or do particular work at a workplace if he or she believes on reasonable grounds that the work constitutes a danger to his or her safety or health or to the safety or health of another worker or another person.*

The Canada Labour Code defines the right to refuse work as:

*128 (1) Subject to this section, an employee may refuse to use or operate a machine or thing, to work in a place or to perform an activity, if the employee while at work has reasonable cause to believe that*

*(a) the use or operation of the machine or thing constitutes a danger to the employee or to another employee;*

*(b) a condition exists in the place that constitutes a danger to the employee; or*

*(c) the performance of the activity constitutes a danger to the employee or to another employee.*

As well, once a worker invokes the right to refuse, it must be investigated by the employer/supervisor who is competent in OHS legislation and requirements. This reinforces the need for supervisors to be properly trained in OHS.

**Section 36 - Where disciplinary action prohibited**

While the current language in Section 36 prohibits “disciplinary action” workers still report employers who are informally targeting workers who following OHS legislation. Such things as harassment, financial impact (loss of overtime), and belittling, and reduced opportunities are a reality that face workers.

We would like to see Section 36 to include language that prohibits any form of disciplinary action or any form of reprisal. This would provide workers with a safety net, when acting in good faith of the OHS legislation, and will place workers’ rights for health and safety paramount.

**REGULATIONS**

**Section 6 - Notifiable Diseases**

Section 6 requires a review and updating to include current diseases that would be classified as a “notifiable.” This could work together with increased sharing of information and a stronger relationship between the Workers’ Compensation Board and OHS.

**Section 8 - Critical Documents**

The current language in Sections 8(1) and (2) only require an employer to make any report required under legislation “readily available” to workers at the worksite, via either a paper copy or downloaded electronic copy. We would like to see further requirements that place the duty on the employer to not only post the report in a conspicuous location for all workers to review, but to make all workers at the worksite aware of the availability and location of the reports. Too often, any report that is required by legislation is either hidden on a bulletin board out of view of workers, or not made visible at all. Workers should have knowledge of all reports as it relates to the worksite conditions and health and safety.

**Section 13 - General Protection of Workers**

Section 13 of the Regulations, as well as the definition of “competent” need to be re-examined and strengthened to better protect workers. It is our experience that workers are not being properly trained, are not being properly supervised and this leads to a high risk to the worker. Employers, to their own benefit deem workers as being “competent.” This is done in a very subjective manner to the sole benefit of the employer.

Regulations that require the employer to provide all necessary education, training, qualifications, experience along with the proper supervision of a competent supervisor would assist in providing safer workplaces. As well, there must be a requirement that all workers, supervisors alike, should be familiar with OHS legislation, so that it can be properly adhered to, as well, make workers familiar with the right to refuse unsafe work when it is required to be exercised. Without any form of OHS competencies, any legislation that is put into place is rendered useless. Until we place obligations that employers provide mandated OHS training and legislation review, OHS language will remain silent.

For example, by definition, Ontario OHS defines “competent” as:

*“competent person” means a person who,*

- (a) is qualified because of knowledge, training and experience to organize the work and its performance,*
- (b) is familiar with this Act and the regulations that apply to the work, and*
- (c) has knowledge of any potential or actual danger to health or safety in the workplace; (“personne compétente”)*

Saskatchewan has some example language when it comes to competencies and its application at the workplace. While this language can be improved, it is an example of the lack of requirements that we currently have in Alberta. Saskatchewan OHS Regulations Sections 15-19 lay out detailed language that is required to verify competencies. We should also look at not only the training and knowledge aspect related to work, but must pay attention to comprehension and understanding. There are a large number of workers who speak languages other than English, and in many occasions, training programs are only targeted in English languages. This leaves many workers vulnerable, as they may not have comprehended the materials being presented. Online training often does not test for worker competencies, merely providing some form of acknowledgement that a worker has, in some fashion, reviewed materials. Online training, and any training for that matter, requires competencies and comprehension to be tested through competent supervision and review procedures. If we establish a better-defined meaning of competencies and how to test for competencies, the definition would apply throughout the legislation and would reinforce a fundamental worker right - the right to know.

As well, the OHS officers must be afforded the full rights and abilities to determine a workers competency level at the worksite. Specific language allowing OHS officers to make an objective determination of a workers competency must be included in any language that speaks to competencies, as we cannot allow a system that gives full determination to the employer.

Similarly, under Section 14 of the Regulations, a workers ability to request the proper education, training, knowledge and supervision must be enhanced. A worker must have the right to request the necessary competencies to fulfil the work, or should be afforded the ability to refuse the work until competency has been deemed and demonstrated.

## **CODE**

### **Part 2 - Hazard Assessment, Elimination and Control**

The current language found in Part 2 should be re-examined and updated. Employers have found loopholes and ways to weaken the language that currently exists. OHS officers are very limited on what they can enforce and often are not able to actually review and require employers to put in place better and safer means of controls for hazards. Too often, hazards are overlooked, minimized by employers, and not properly identified and communicated to the workers. This leaves a significant gap in the protection of workers.

We would like to see tougher language in the hazard assessment process where employers are required to, not only conduct assessments on any and all hazards presented to workers at the worksite, but strict involvement from the workers when the hazards assessment process is being conducted and reviewed. Employers should be required to have a minimum level of 60-75% of worker participation per worksite or work area (in the event of a large worksite such as a hospital-can be broken down to units for example). By placing a minimum level of participation from workers, it would better assist in the identification of hazards, and would encompass all shift workers in the process. Currently we believe that hazards are being identified on dayshift, but hazards that present to evening and nightshift workers are being overlooked. As well, evening and nightshift workers often are not involved in any hazard assessment process. We recommend that any worker and employer representative involved in the hazard assessment process be competent in OH&S legislation and requirements, in accordance with our previous submission for improved competency definitions.

Employers should also be required to inform all workers of the hazards presented to the workers at the worksite. Currently Section 8(2) allows employers, to simply place hazard assessments in a binder somewhere at the worksite. The current explanation guide on Section 8(2) states:

*The findings of the hazard assessment report can be communicated to workers by any effective method. This may include briefing workers on a one-to-one basis, discussing the results at safety meetings, or posting the results in a location accessible to workers.*

This language does nothing to force employers to ensure that all workers have reviewed the hazard assessment report and that they comprehend it. We recommend that employers be required to inform workers of all hazards at the worksite, and that employers be required to provide each individual worker with a copy (physical or electronic) of the hazard assessment report. As well, employers should be required to ensure that all workers have reviewed the hazard assessment report, prior to work being conducted.

Under Part 2-Section 9, we must remove the word “practicable.” Employers construe this, which allows them the ability to decide cost over safety. Hazards should be eliminated where reasonable, regardless of cost.

Section 7(4) should also include language that requires hazard assessments to be repeated “not less than once per year.” We have seen far too many worksites where hazard assessments have not been reviewed or reassessed for years, and this leaves significant gaps in the identification and elimination/control of those hazards.

Section 11 should require all employers to have in place health and safety policies, procedures and plans. This should not be by order of a Director.

Hazard assessments must be conducted with consideration of the workers mental health and worker well being. Factors such as fatigue, illness, hours of work, and inadequate staffing levels all have impacts on a workers abilities and decision-making. Harassment, bullying, and domestic violence are also factors that require being included in hazard assessments. Hazard assessments should be required to include all aspects of a workers mental health and other factors that relate to the workers well being.

#### **Part 4 - Chemical Hazards, Biological Hazards and Harmful Substances**

Workers exposure to any and all chemical, biological, and harmful substances must be kept to the lowest amount achievable. However, the current language under Part 4, as well as the current occupational exposure limits (OEL) found under Schedule 1 does not reflect this.

Beginning with the definition of “exposed worker.” Currently “exposed worker” is defined under Part 1 of the OHS Code as:

*“exposed worker” means a worker who may be expected to work in a restricted area at least 30 work days in a 12-month period.*

This definition does nothing to protect a worker. Employers take advantage of this poorly worded definition and workers are exposed to substances and materials that they should not be exposed to. This definition must be changed. A worker, who has been exposed to any amount of harmful substances, should be deemed an “exposed worker.”

Many other jurisdictions follow OEL’s established and listed by the American Conference of Governmental Industrial Hygienists (ACGIH). While the ACGIH uses the term threshold limit values (TLV) certainly Alberta can use their information and adopt this as our OEL. ACGIH produces values for chemical and physical agents, as well as biological exposure indices. British Columbia currently utilizes the values and publications put out by the ACGIH. It is recommended that we do the same, and in doing so, would create harmony and consistency with other jurisdictions, including close provinces that some of our workers may be working under. Alberta should restrict any OEL that have a higher benchmark than those set out by the ACGIH. For example, the following is from the Manitoba Workplace Health and Safety Act:

#### ***Occupational exposure limits for airborne hazardous substances***

##### ***Establishing airborne occupational exposure limits***

*36.5(1) Subject to subsection (2), if an assessment under section 36.2 determines that the presence of an airborne chemical or biological substance in the workplace creates or may create a risk to the safety or health of a worker, an employer must*

- (a) in the case of an airborne substance for which the ACGIH has established a threshold limit value, establish an occupational exposure limit for the substance that does not exceed the threshold limit value established by the ACGIH;*
- (b) in the case of an airborne designated material, establish an occupational exposure limit for the material that is as close to zero as possible and does not exceed the threshold limit value established by the ACGIH, where one exists; or*
- (c) in the case of an airborne substance for which the ACGIH has not established a threshold limit value,*
  - (i) implement control measures in the workplace sufficient to eliminate any risk to the safety or health of a worker, or*
  - (ii) ensure that a competent person establishes an occupational exposure limit for the substance that will ensure that the safety or health of all workers in the workplace will not be placed at risk.*

36.5(2) When exposure to an airborne chemical or biological substance at a concentration below the threshold limit value for that substance established by the ACGIH creates or may create a risk to the safety or health of a worker in a workplace due to

- (a) conditions in the workplace, including,
  - (i) heat,
  - (ii) ultraviolet and ionizing radiation,
  - (iii) humidity,
  - (iv) pressure,
  - (v) length of work shift, work-rest regime, or
  - (vi) additive and synergistic effects of materials and workload; or
- (b) the health or physical condition of a worker in the workplace known to an employer;  
the employer must establish a lower occupational exposure limit for that substance than the limit established by the ACGIH. The occupational exposure limit established by the employer must ensure that the safety or health of workers who are exposed to the substance in that workplace at levels below that limit will not be placed at risk.

As well, Section 19 requires revision. Constant revision of OEL must occur to keep them current and updated. This would prevent unknown and unnecessary exposure to workers. Following the ACGIH, this constant revision would be on going.

Employers should also be required to assess materials prior to being implemented at the worksite, and develop safe working plans for hazardous/harmful substances. Again, Manitoba provides the following example:

***Duty to assess chemical and biological substances***

**36.2(1)** An employer must assess all information that is practicably available to the employer respecting a chemical or biological substance present in the workplace to determine if the substance creates or may create a risk to the safety or health of a worker in the workplace. The assessment must take place in consultation with

- (a) the committee at the workplace;
- (b) the representative at the workplace; or
- (c) when there is no committee or representative, the workers at the workplace.

An employer must reassess a chemical or biological substance in accordance with the requirements of subsection (1) if

**36.2(2)**

- (a) there is a change
  - 1. (i) in conditions in the workplace, or
  - 2. (ii) in the health or physical condition of a worker known to the employer; or
- (b) new information about the substance becomes available to the employer.

***Safe work procedures***

**36.3** An employer must

- (a) develop and implement safe work procedures respecting the use, production, storage, handling and disposal of any chemical or biological substance that an assessment under section 36.2 has determined creates or may create a risk to the safety or health of a worker in that workplace;
- (b) train workers in the safe work procedures; and
- (c) ensure that workers comply with the safe work procedures.

In creating a system of proper assessment and safe work plans, workers should be better protected than the current system that we have. Chemical, biological and harmful substances are ever increasing and special attention need to be paid to this part of the Code. As well, workplace scents are becoming a larger concern, and there needs to be an examination to this aspect.

Part 4 also needs to examine and cover all aspects regarding possible exposure to illicit drugs. This is highlighted by the current opioid crisis affecting Canada, where drugs such as Fentanyl and Carfentanyl have a significant potential to cause bodily harm and death. While contact with illicit drugs may be encompassed with current legislation, we would like to see dedicated attention to this issue, given the significant risk to workers especially in high-risk occupations such as police, sheriffs, corrections, social services, and health care.

### **Part 7 - Emergency Preparedness and Response**

We would recommend language to be incorporated into Part 7 that forces employers to practice training exercises related to emergency preparedness plans with all workers once every year. All workers, regardless of shifts or status (full-time, part-time, casual, seasonal), must all have the necessary training and requisite education.

Currently, Section 117(3) and (4) relate to training, and training exercises when it comes to emergency preparedness. However, employers are not adequately practising the emergency plans. Workers report to us that they either have never been informed of the plan itself, or have never or limited experience in practising. Emergency situations, when they arise, cause stressors on workers, and without proper training and education, workers are vulnerable, as well as the people that may be under their care.

As well, Part 7- Section 118 requires employers to have necessary equipment to carry out emergency preparedness plans. This requires better enforcement.

### **Part 14 - Lifting and Handling Loads**

In 2016, bodily reaction or exertion was the most common cause for both lost-time and disabling injury claims in Alberta, and accounted for 42.1 per cent of the lost-time claims and 46.3 per cent of the disabling injury claims according to the Workplace Injury, Disease and Fatality Statistics Provincial Summary report found on the Alberta Labour website.

Lifting and handling loads requires specific attention given the high rate of injuries it is causing. Musculoskeletal injuries (MSI) require a specific update in language to bring the attention required in assessment and prevention, as well as could serve well as a stand-alone code. Other provinces and jurisdictions have much better language than we currently operate under. Saskatchewan has language that specifies what MSIs are, requirements for informing the worker of the risks associated with the work, and also includes language for shift workers and exertion. Manitoba is similar with language requiring assessments, and duty to inform workers. British Columbia has the following language that deals with MSI:

#### **4.46 Definition**

*In sections 4.47 to 4.53 (the Ergonomics (MSI) Requirements)*

*“musculoskeletal injury” or “MSI” means an injury or disorder of the muscles, tendons, ligaments, joints, nerves, blood vessels or related soft tissue including a sprain, strain and inflammation, that may be caused or aggravated by work.*

#### **4.47 Risk identification**

*The employer must identify factors in the workplace that may expose workers to a risk of musculoskeletal injury (MSI).*

#### **4.48 Risk assessment**

*When factors that may expose workers to a risk of MSI have been identified, the employer must ensure that the risk to workers is assessed.*

#### **4.49 Risk factors**

*The following factors must be considered, where applicable, in the identification and assessment of the risk of MSI:*

- (a) the physical demands of work activities, including
  - (i) force required,*
  - (ii) repetition,*
  - (iii) duration,*
  - (iv) work postures, and*
  - (v) local contact stresses;**



- (b) *aspects of the layout and condition of the workplace or workstation, including*
  - (i) *working reaches,*
  - (ii) *working heights,*
  - (iii) *seating, and*
  - (iv) *floor surfaces;*
- (c) *the characteristics of objects handled, including*
  - (i) *size and shape,*
  - (ii) *load condition and weight distribution, and*
  - (iii) *container, tool and equipment handles;*
- (d) *the environmental conditions, including cold temperature;*
- (e) *the following characteristics of the organization of work:*
  - (i) *work-recovery cycles;*
  - (ii) *task variability;*
  - (iii) *work rate.*

#### **4.50 Risk control**

- (1) *The employer must eliminate or, if that is not practicable, minimize the risk of MSI to workers.*
- (2) *Personal protective equipment may only be used as a substitute for engineering or administrative controls if it is used in circumstances in which those controls are not practicable.*
- (3) *The employer must, without delay, implement interim control measures when the introduction of permanent control measures will be delayed.*

#### **4.51 Education and training**

- (1) *The employer must ensure that a worker who may be exposed to a risk of MSI is educated in risk identification related to the work, including the recognition of early signs and symptoms of MSIs and their potential health effects.*
- (2) *The employer must ensure that a worker to be assigned to work which requires specific measures to control the risk of MSI is trained in the use of those measures, including, where applicable, work procedures, mechanical aids and personal protective equipment.*

#### **4.52 Evaluation**

- (1) *The employer must monitor the effectiveness of the measures taken to comply with the Ergonomics (MSI) Requirements and ensure they are reviewed at least annually.*
- (2) *When the monitoring required by subsection (1) identifies deficiencies, they must be corrected without undue delay.*

#### **4.53 Consultation**

- (1) *The employer must consult with the joint committee or the worker health and safety representative, as applicable, with respect to the following when they are required by the Ergonomics (MSI) Requirements:*
  - (a) *risk identification, assessment and control;*
  - (b) *the content and provision of worker education and training;*
  - (c) *the evaluation of the compliance measures taken.*
- (2) *The employer must, when performing a risk assessment, consult with*
  - (a) *workers with signs or symptoms of MSI, and*
  - (b) *a representative sample of the workers who are required to carry out the work being assessed.*

With any language, we need to reinforce worker safety when it comes to lifting and handling loads.

As well, workers who have to deal with moving of patients, residents, or clients deserve improved language that deals with factors outside the ones currently listed in Section 210(1). When dealing with moving people, consideration needs to be given to the state of the individual being moved, possible unpredictable movement of the individual being moved, aggression level of the individual being moved, as well as physical well-being of the worker or workers moving the individual.

## **Part 27 - Violence**

Violent acts in workplaces are on the rise, and the current language in Part 27 does not meet requirements for the protection of workers and the obligation of employers to do so.

Other provinces have language that is much more detailed, and provides much more requirements and provisions to be followed when it comes to workplace violence. There should also be special attention paid to psychological violence as it pertains to workplace violence. As a comparison, below is an example of some of the language found within Manitoba's OHS Act when it comes to workplace violence.

### **PART 11 VIOLENCE IN THE WORKPLACE**

#### **Application**

**11.1** A workplace is subject to this Part if

- (a) the workplace is used to provide healthcare services, which for certainty includes the workplaces described in section 11.8;
- (b) the workplace is used to provide the following services:
  - (i) pharmaceutical-dispensing services,
  - (ii) education services,
  - (iii) financial services,
  - (iv) police, corrections or other law enforcement services,
  - (v) security services,
  - (vi) crisis counselling and intervention services,
  - (vii) public transportation, if the workplace is a taxi cab or a transit bus;
- (c) the workplace is open to the public for the purpose of retail sales between the hours of 11:00 p.m. and 6:00 a.m.;
- (d) the workplace is a licensed premises within the meaning of *The Liquor Control Act*; or
- (e) the workplace is made subject to this Part as the result of an assessment done under section 11.2.

#### **Employer must assess risk of violence**

**11.2** An employer at a workplace that is not described in clauses 11.1(a) to (d) must assess the risk of violence to a worker at the workplace. The assessment must be carried out in consultation with

- (a) the committee at the workplace;
- (b) the representative at the workplace; or
- (c) when there is no committee or representative, the workers at the workplace.

A workplace is subject to this Part if a risk of violence to a worker is identified as a result of the assessment.

#### **Violence prevention policy**

1. 11.3(1) For a workplace that is subject to this Part, the employer must

- (a) develop and implement a violence prevention policy at the workplace;
- (b) train workers in the violence prevention policy; and
- (c) ensure that workers comply with the violence prevention policy.

2. 11.3(2) The violence prevention policy must be developed in consultation with

- (a) the committee at the workplace;
- (b) the representative at the workplace; or
- (c) when there is no committee or representative, the workers at the workplace.

#### **Content of violence prevention policy**

11.4

A violence prevention policy must set out the actions and measures the employer will take to eliminate the

risk of violence to a worker or to control that risk if it is not reasonably practicable to eliminate it. Without limitation, the violence prevention policy must include

- (a) a description of
  - (i) any particular worksite at the workplace where an incident of violence has occurred or may reasonably be expected to occur, and
  - (ii) any particular job functions at the workplace where the worker performing the function has been, or may reasonably be expected to be, exposed to incidents of violence;
- (b) the measures that the employer must implement to eliminate the risk of violence to a worker at the workplace, or to control that risk if it is not reasonably practicable to eliminate it;
- (c) the measures and procedures that the employer has in place for summoning immediate assistance when an incident of violence occurs or is likely to occur;
- (d) the procedure a worker is to follow in reporting an incident of violence to the employer, including how and when an incident is to be reported;
- (e) the procedure the employer will follow to document and investigate any incident of violence to a worker that the employer becomes aware of;
- (f) the procedure the employer will follow to implement any control measures identified as a result of the investigation that will eliminate or control the risk of violence to a worker;
- (g) a recommendation that a worker who has been harmed as a result of an incident of violence at the workplace is advised to consult the worker's health care provider for treatment or referral for post-incident counselling, if appropriate; (\*recommend removing "if appropriate")
- (h) in respect of an incidence of violence, a statement that the employer must not disclose the name of a complainant or the circumstances related to the complaint to any person, other than where the disclosure is
  - (i) necessary in order to investigate the complaint,
  - (ii) required in order to take corrective action in response to the complaint, or
  - (iii) required by law;
- (i) a statement that the personal information that is disclosed under clause (h) in respect of an incidence of violence must be the minimum amount necessary for the purpose; and
- (j) a statement that the violence prevention policy is not intended to discourage or prevent a complainant from exercising any other rights, actions or remedies that may be available to him or her under any other law.

**Policy and information to be given to workers**

**11.5(1)** If a workplace is subject to this Part, the employer must

- (a) post a copy of the violence prevention policy in a conspicuous place at the workplace or, if posting is not practicable, provide a copy of the violence prevention policy to each worker; and
- (b) inform each of worker about the nature and extent of the risk of violence to a worker in the workplace.

**11.5(2)** Unless otherwise prohibited by law, the duty to inform a worker about the risk of violence under clause (1)(b) includes a duty to provide any information in the employer's possession, including personal information, related to the risk of violence from persons who have a history of violent behaviour and whom workers are likely to encounter in the course of their work.

**11.5(3)** The personal information provided under clause (1)(b) must be the minimum amount necessary to accomplish the purpose.

**Employer's obligation to investigate and implement control measures 11.6** As soon as reasonably practicable after an incident of violence to a worker, the employer must

- (a) investigate the incident; and
- (b) implement any control measure that is identified as a result of the investigation that will eliminate or control the risk of violence to a worker.

As well, there requires inclusion of language that deal with workplace related harassment and bullying, as well as language that deals with domestic violence. Several other provinces have updated their OHS legislation to include language that deals with harassment and domestic violence. Quebec, in their Labour Standards (Section 81.18) uses the following to define psychological harassment:

*INTERPRETATION*

*For the purposes of this Act, “psychological harassment” means any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affects an employee’s dignity or psychological or physical integrity and that results in a harmful work environment for the employee.*

*VEXATIOUS BEHAVIOUR*

*A single serious incidence of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment.*

Alberta’s current definition of violence requires updating. It should include not only physical injury, but also psychological injury. Currently the definition of violence in Alberta is:

*“violence” whether at a work site or work related, means the threatened, attempted or actual conduct of a person that causes or is likely to cause physical injury*

Saskatchewan Health and Safety Regulations provides the following when dealing with harassment:

**Harassment**

**36(1)** *An employer, in consultation with the committee, shall develop a policy in writing to prevent harassment that includes:*

- (a) a definition of harassment that includes the definition in the Act;*
  - (b) a statement that every worker is entitled to employment free of harassment;*
  - (c) a commitment that the employer will make every reasonably practicable effort to ensure that no worker is subjected to harassment;*
  - (d) a commitment that the employer will take corrective action respecting any person under the employer’s direction who subjects any worker to harassment;*
  - (e) an explanation of how complaints of harassment may be brought to the attention of the employer;*
  - (f) a statement that the employer will not disclose the name of a complainant or an alleged harasser or the circumstances related to the complaint to any person except where disclosure is:
    - (i) necessary for the purposes of investigating the complaint or taking corrective action with respect to the complaint; or*
    - (ii) required by law;**
  - (g) a reference to the provisions of the Act respecting harassment and the worker’s right to request the assistance of an occupational health officer to resolve a complaint of harassment;*
  - (h) a reference to the provisions of The Saskatchewan Human Rights Code respecting discriminatory practices and the worker’s right to file a complaint with the Saskatchewan Human Rights Commission;*
  - (i) a description of the procedure that the employer will follow to inform the complainant and the alleged harasser of the results of the investigation; and*
  - (j) a statement that the employer’s harassment policy is not intended to discourage or prevent the complainant from exercising any other legal rights pursuant to any other law.*
- (2)** *An employer shall:*
- (a) implement the policy developed pursuant to subsection (1); and*
  - (b) post a copy of the policy in a conspicuous place that is readily available for reference by workers.*

Ontario- Part III.0.1 has language within their “Violence and Harassment” language, that while simplistic, still directly relates to domestic violence and it’s connection to OHS:

*Domestic violence*

*32.0.4 If an employer becomes aware, or ought reasonably to be aware, that domestic violence that would likely expose a worker to physical injury may occur in the workplace, the employer shall take every precaution reasonable in the circumstances for the protection of the worker.*

## **Part 28 - Working Alone**

Working alone has become a large concern for workers in the province and country. Once again, Alberta is behind other provinces when it comes to working alone provisions and requirements. We require not only updating to working alone and it's provisions, but also language that deals with late night operations.

British Columbia has some of the most rigorous and detailed working alone provisions in the Country.

### **4.20.1 Definition**

*In sections 4.20.2 to 4.23, "to work alone or in isolation," means to work in circumstances where assistance would not be readily available to the worker*

- (a) in case of an emergency, or*
- (b) in case the worker is injured or in ill health.*

### **4.20.2 Hazard identification, elimination and control**

*(1) Before a worker is assigned to work alone or in isolation, the employer must identify any hazards to that worker.*

*(2) Before a worker starts a work assignment with a hazard identified under subsection (1), the employer must take measures*

- (a) to eliminate the hazard, and*
- (b) if it is not practicable to eliminate the hazard, to minimize the risk from the hazard.*

*(3) For purposes of subsection (2) (b), the employer must minimize the risk from the hazard to the lowest level practicable using engineering controls, administrative controls or a combination of engineering and administrative controls.*

### **4.21 Procedures for checking well-being of worker**

*(1) The employer must develop and implement a written procedure for checking the well-being of a worker assigned to work alone or in isolation.*

*(2) The procedure for checking a worker's well-being must include the time interval between checks and the procedure to follow in case the worker cannot be contacted, including provisions for emergency rescue.*

*(3) A person must be designated to establish contact with the worker at predetermined intervals and the person must record the results.*

*(4) In addition to checks at regular intervals, a check at the end of the work shift must be done.*

*(5) The procedure for checking a worker's well-being, including time intervals between the checks, must be developed in consultation with the joint committee or the worker health and safety representative, as applicable.*

*(6) Time intervals for checking a worker's well-being must be developed in consultation with the worker assigned to work alone or in isolation.*

*Note: High risk activities require shorter time intervals between checks. The preferred method for checking is visual or two-way voice contact, but where such a system is not practicable, a one-way system which allows the worker to call or signal for help and which will send a call for help if the worker does not reset the device after a predetermined interval is acceptable.*

### **4.22 Training**

*A worker described in section 4.21(1) and any person assigned to check on the worker must be trained in the written procedure for checking the worker's well-being.*

#### **4.22.1 Late night retail safety procedures and requirements**

*(1) In this section:*

*"late night hours" means any time between 11:00 p.m. and 6:00 a.m.;*

*"late night retail premises" means*

- (a) a gas station or other retail fueling outlet, or*
- (b) a convenience store or any other retail store where goods are sold directly to consumers that is open to the public for late night hours;*

*"violence prevention program" means a program implemented under subsection (2)(b)(iii).*

*(2) If a worker is assigned to work alone or in isolation in late night retail premises and there is any risk of harm from a violent act to the worker, then, in addition to any other obligations the employer has under sections 4.20.2 to 4.23 and 4.28 to 4.30,*

*(a) the employer must develop and implement a written procedure to ensure the worker's safety in handling money, and*

*(b) when that worker is assigned to work late night hours, the employer must also do one or more of the following:*

*(i) ensure that the worker is physically separated from the public by a locked door or barrier that prevents physical contact with or access to the worker;*

*(ii) assign one or more workers to work with the worker during that worker's assignment;*

*(iii) implement a violence prevention program in accordance with subsections (2.1) to (2.3).*

*(2.1) A violence prevention program must include procedures, policies and work environment arrangements necessary to ensure that all of the following requirements are met:*

*(a) there is a time lock safe on the premises that cannot be opened during late night hours;*

*(b) cash and lottery tickets that are not reasonably required in order to operate during late night hours are stored in the time lock safe referred to in paragraph (a);*

*(c) there is good visibility both into and out of the premises;*

*(d) there is limited access to the inside of the premises;*

*(e) the premises are monitored by video surveillance;*

*(f) there are signs on the premises, visible to the public, indicating that*

*(i) the safe on the premises is a time lock safe that cannot be opened during late night hours,*

*(ii) there is a limited amount of accessible cash and lottery tickets on the premises, and*

*(iii) the premises are monitored by video surveillance;*

*(g) a worker described in subsection (2)*

*(i) is at least 19 years of age, and*

*(ii) is provided with a personal emergency transmitter that is monitored by*

*(A) the employer, or*

*(B) a security company or other person designated by the employer.*

*(2.2) By the end of the first year of the implementation of a violence prevention program and by the end of every second year after that first year, the employer must receive a security audit report, in writing, from an independent qualified person confirming that the program meets all of the requirements under subsection (2.1).*

*(2.3) The written security audit report referred to in subsection (2.2) must be*

*(a) retained by the employer, and*

*(b) posted by the employer in the workplace for a period beginning on or immediately after the date the report is received and ending no earlier than the date on which the next report is posted.*

*(3) The employer must train a worker described in subsection (2) in*

*(a) the written procedure referred to in subsection (2)(a), and*

*(b) if the employer implements a violence prevention program, the procedures, policies and work environment arrangements referred to in subsection (2.1).*

*(4) A worker described in subsection (2) must*

*(a) follow the written procedure referred to in subsection (2)(a), and*

*(b) if the employer implements a violence prevention program,*

*(i) follow the procedures, policies and work environment arrangements referred to in subsection (2.1), and*

*(ii) wear, during late night hours, the personal emergency transmitter referred to in subsection (2.1)(g)(ii).*

#### **4.22.2 Mandatory prepayment for fuel**

*An employer must require that customers prepay for fuel sold in gas stations and other retail fueling outlets.*

#### **4.23 Annual reviews of procedures**

*The procedures referred to in sections 4.21 and 4.22.1(2)(a) and, if a violence prevention program is implemented, the procedures, policies and work environment arrangements referred to in section 4.22.1(2.1), must be reviewed at least annually, or more frequently if there is*

- (a) a change in work environment arrangements that could adversely affect
  - (i) the effectiveness of the violence prevention program, or*
  - (ii) a worker's well-being or safety, or**
- (b) a report that the procedures, policies or work environment arrangements, as applicable, are not working effectively.*

Attention must be paid to working alone and the definition of such. While currently Alberta uses "Awareness, Willingness, Timeliness" as tests to determine working alone, it isn't always applied in the manner it should be. Health care facilities should be required to provide a "nurse alert" type system to all staff, as they work alone with patients/resident providing care. This is more evident on evening and night shifts, and this requires specific thought.

### **Part 29 - Workplace Hazardous Materials Information System (WHMIS)**

This Part of the code will require updating with the incoming changes surrounding WHMIS. WHMIS2015 is going to be synchronizing all systems globally and Part 29 will need changes to reflect this.

### **Part 35 - Health Care and Industries with Biological Hazards**

Part 35 should be updated to reflect the changing health care environment. Saskatchewan is a good example of a province that has paid specific attention to the protection of health care workers. Part XXXI of the Saskatchewan Health and Safety Regulations provide much more protection for health care workers and the dangers that they face in their specific work environment.

As well, Alberta needs to pay very specific attention to cytotoxic drugs and legislative requirements in order to protect health care workers from these harmful drugs. Saskatchewan has had specific language for cytotoxic drugs dating back to at least 1998, and while its language can use updating as well, it would be a good starting point for Alberta. Its language states:

#### ***Cytotoxic drugs***

**471(1)** *In this section, "cytotoxic drugs" means drugs that inhibit or prevent the functions of cells and are manufactured, sold or represented for use in treating neoplastic or other conditions.*

*(2) An employer shall take all practicable steps to minimize the exposure of workers to cytotoxic drugs or to materials or equipment contaminated with cytotoxic drugs.*

*(3) On and after July 1, 1998, where workers prepare parenteral cytotoxic drugs on a frequent and continuing basis, an employer shall provide and maintain an approved biological safety cabinet in accordance with subsection (4) and ensure that workers use the cabinet safely.*

*(4) A biological safety cabinet must be:*

*(a) inspected and certified by a competent person at least annually and when the biological safety cabinet is moved; and*

*(b) used and maintained according to an approved procedure or the manufacturer's recommendations.*

*(5) Where workers are required to prepare, administer, handle or use cytotoxic drugs or are likely to be exposed to cytotoxic drugs, an employer, in consultation with the committee, shall develop a written program to protect the health and safety of workers who may be exposed to cytotoxic drugs or to materials or equipment contaminated with cytotoxic drugs.*

*(6) A program developed pursuant to subsection (5) must include:*

*(a) the measures to be taken to identify, store, prepare, administer, handle, use, transport and dispose of cytotoxic drugs and materials contaminated with cytotoxic drugs;*

- (b) *the emergency steps to be followed in the event of:*
  - (i) *a spill or leak of a cytotoxic drug; or*
  - (ii) *worker exposure to cytotoxic drugs by a puncture of the skin, absorption through the skin, contact with an eye, inhalation of drug dust or ingestion of a contaminated substance;*
- (c) *the methods to be followed in maintaining and disposing of equipment contaminated with cytotoxic drugs;*
- (d) *the use to be made of engineering controls, work practices, hygiene practices and facilities, approved respiratory protective devices, approved eye or face protectors and other personal protective equipment and decontamination materials and equipment that are appropriate in the circumstances; and*
- (e) *the use to be made of an approved biological safety cabinet for the preparation of cytotoxic drugs and the methods to be followed in maintaining the cabinet.*

(7) *An employer shall:*

- (a) *implement the program developed pursuant to subsection (5);*
- (b) *ensure that all workers who may be exposed to cytotoxic drugs or to materials or equipment contaminated with cytotoxic drugs are trained in the program; and*
- (c) *make a copy of the program readily available for reference by workers.*

**Waste**

**472(1)** *Where exposure to waste is likely to endanger the health or safety of a worker, an employer shall develop and implement a process that ensures that the waste:*

- (a) *is segregated at the place where the waste is located or produced;*
- (b) *is contained in a secure, clearly labelled package or container that holds the contents safely until it is cleaned, decontaminated or disposed of; and*
- (c) *is cleaned, decontaminated or disposed of in a manner that will not endanger the health or safety of any worker.*

(2) *An employer shall ensure that:*

- (a) *a worker or self-employed person who generates, collects, transports, cleans, decontaminates or disposes of waste or launders contaminated laundry is trained in safe work practices and procedures, and is provided with personal protective equipment, that are appropriate to the risks associated with the worker's work; and*
- (b) *a worker or self-employed person described in clause (a) uses the safe work practices and procedures and the personal protective equipment mentioned in that clause.*

**Equipment contaminated with waste**

**473** *An employer shall ensure that, where reasonably practicable, any equipment that has been contaminated with waste is inspected and decontaminated before it is repaired or shipped for repair.*

**Waste needles, etc.**

**474(1)** *An employer shall provide readily accessible containers for waste needles, syringes, blades, clinical glass and any other clinical items that are capable of causing a cut or puncture and shall ensure that workers and self-employed persons use those containers.*

(2) *The containers required by subsection (1) must:*

- (a) *have a fill line;*
- (b) *be clearly identified as containing hazardous waste; and*
- (c) *be sturdy enough to resist puncture under normal conditions of use and handling until the containers are disposed of.*

(3) *An employer shall ensure that workers do not manually clip, bend, break or recap waste needles.*



## GENERAL SUBMISSIONS

- 1) The application of the Act needs updating to include domestic workers. This change is required given the vast array of flexible working options available to workers, and the increase in services being provided by workers in such industries as home care. Leaving a percentage of workers exposed to no protection, will inevitably lead to health and safety concerns and increased incidents. Other jurisdictions have put in language associated with the amount of hours per week, and the application of legislation. Alberta should reconsider domestic workers and the application of OHS legislation.
- 2) We would recommend that as Union representatives, we be included in any legislative changes, and be granted legislative permission to act as a representative agent for our members. We should be afforded the ability to represent at such things as incident investigations, inspections, adjudication proceedings, appeal hearings and any other function affecting our members. As workers represented by a Union, workers expect that Unions will represent them and their best interests. We must have recognition within OHS legislation and a set of specified roles that should include, at the very minimum, incident investigations, investigations, and adjudications proceedings.
- 3) All workers in Alberta, who wish to appeal decisions to the OHS Council, or any body should that change, should have an available assistance option. Currently, workers (more so non-unionized) are left alone to proceed to appeal should they disagree with a ruling or a penalty impacting them. This can be very intimidating for a worker, and without assistance provided most workers will not seek legal council and proceed to hearing. This leaves workers vulnerable and frustrated at the very system that is meant to protect them.
- 4) Alberta needs to take a tougher stance on prosecution for OHS offences. Bill C-45, which was enacted in 2004, allows for criminal code charges in cases where negligence has been proven, and where serious injury or fatality is the result. According to the Canadian Centre for Occupational Health and Safety (CCOHS) there have been 8 documented cases where criminal charges have been laid in Canada, none of which are in Alberta. A recent case from the oil industry is a prime example of where criminal charges should apply. Jerry Cooper was killed on the job, and was found to have been working in the same conditions reported to the employer in previous instances as near misses and under incident reports. In cases where OHS concerns have been reported to employers, and where they fail to act on the concerns, there needs to be better and enhanced enforcement. This is a case where criminal charges were warranted.
- 5) Legislation regarding young workers should be looked at and included in any OHS system review. Young workers are reported to be the most vulnerable working group amongst workers, and without specific legislation, these workers will remain left behind. Other jurisdictions have gone to the step of specific OHS language and Alberta should follow.
- 6) Alberta Labour must be equipped with the necessary resources to not only fulfill their roles now, but any changes to be made. Alberta requires more OHS officers, as there is shortage given the territory required to cover and the amount of employers in the province. As well, Alberta Labour should be able to work with employers and workers, providing education opportunities, which would include basic OHS information, requirements, and obligations. While larger employers have resources to put into OHS programs, many smaller employers do not, and therefore those employers and their workers often are unaware of legislation and the obligations.
- 7) Post Traumatic Stress Disorder (PTSD) requires a specific review. PTSD is very prominent in front line emergency workers, as well in occupations that require a worker to be a primary care or service provider. AUPE continues our call and recommendation for presumptive inclusion for these workers in legislation. Leaving workers out of presumptive PTSD inclusion is not only damning to the workers health and well being, but also a notice to the worker that, no matter the work you've done for the province and it's population, your health does not matter to us. While a recent WCB review has recommended corrections workers and emergency dispatchers be covered under presumptive inclusion, many workers are still being left out of necessary coverage. Social workers, nurses, judicial clerks are some of the "high risk" careers that have a significant potential of impacting workers with mental health concerns. These workers, who come to work to assist not only the province but also the people within the province, should not be left on their own to deal with work related and work caused mental health disorders and injuries. As well, PTSD awareness, education and reporting require significant attention. By tracking and identifying "high-risk" or "high frequency" workplaces, it would allow for targeted education and training, as well as resources to be put in place to help with the resulting mental health concerns.







**Alberta Union of Provincial Employees**  
10451 - 170 Street NW, Edmonton, AB T5P 4S7  
T: 1-800-232-7284 F: (780) 930-3392  
[www.aupe.org](http://www.aupe.org)