



This newsletter is to inform you of recent changes and trends regarding health and safety. The Turning Point is a monthly newsletter covering topics from various industries and sectors. The Turning Point will respond to your inquiries and inform you of current services and updates regarding Raising the Standard Consulting Inc.

Bill 168 2009

Ontario Passes OHSA Violence & Harassment - Related Provisions Into Law

On December 9, 2009, Bill 168, the Ontario government's detailed proposal to amend the *Ontario Occupational Health and Safety Act* (OHSA) to require worker protection from violence and harassment, and establish new specific worker rights relating to violence, received third reading. The content of Bill 168 has now been finalized and Ontario workplaces will have a period of six months from the date of Royal Assent to ready their workplaces, policies, programs and practices to ensure compliance with these provisions.

Bill 168 received robust debate, and was amended slightly before passage. This news letter provides highlights of new employer obligations and worker rights as they were amended and passed into law.

The amendments contain seven key areas -- mandatory new employer policies, required programs, required training, required risk assessments, worker rights, obligations to respond to domestic violence in the workplace, and employer reporting requirements -- each of which is detailed in the proceeding pages.

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UPDATES

Napanee, ON - Lafarge Canada Inc., a manufacturer of construction material, pleaded guilty today to a violation of the Occupational Health and Safety Act (OHSA) that caused the death of a worker. The company was fined \$350,000.

On August 27, 2008, workers at the company's cement plant in Ernestown were lining the inside of a kiln with new bricks. To install bricks on the ceiling of the kiln, the workers used a special rig. The rig was composed of a work platform mounted on four legs with an overhead arch to hold up bricks. As the workers advanced the rig along the sloping kiln floor, they had to adjust its legs to keep the work platform level. As the rig was being adjusted, its platform lurched forward. The workers who had been on the platform fell, as did the rig's arch. The arch, weighing over 400 kilograms, landed on one of the workers, fatally crushing him. A Ministry of Labour investigation found that a manufacturer's sign on the rig prohibited workers from staying on the rig as it was being moved. The company did not have a written policy or clearly planned procedures for moving and adjusting the rig on the sloping floor of the kiln.

Lafarge Canada Inc. pleaded guilty to failing to take the reasonable precaution of ensuring no worker was on the platform of the rig as it was being moved or adjusted.

Belleville, ON - Sherritt International Corporation, a natural resource company operating as Canada Talc, pleaded guilty and was fined \$285,000 today for a violation under the Occupational Health and Safety Act (OHSA) after a young worker was killed. On August 20, 2008, a young worker at the Canada Talc mine in Madoc was killed by a flood of broken rock, sediment and water, called muck. The worker had been operating equipment to fill bins with muck flowing down from other areas of the mine. The bins were then sent up to the surface of the mine to be emptied. During the night, another worker on the surface of the mine heard unusual sounds coming from the muck-loading area. A camera in the mine shaft revealed an overflow of muck. When the young worker could not be contacted by telephone, a third worker went to investigate. That worker, upon arrival, saw an overflow of muck going down past the young worker's control station. The young worker had been asphyxiated.

A Ministry of Labour investigation found that the young worker's control station was located directly in front of the tunnel from which muck was flowing, putting the worker in danger during a run of muck. Water had also been added to the muck to make it flow faster. Additionally, the worker had not yet completed training specific to his task, he was working alone, and the mine's written procedures did not adequately address how to control a run of muck.

Sherritt International Corporation, operating as Canada Talc, pleaded guilty to failing to take the reasonable precaution of developing and implementing safety procedures and devices to protect the worker from a run of muck.

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Bill 168 2009

Ontario Passes OHS Violence & Harassment - Related Provisions Into Law

1. Employer Obligation To Prepare Written Violence And Harassment Policies

Where more than five workers are regularly employed at a workplace, Ontario employers will now be required to prepare and post a workplace violence policy. The specific definition of "workplace violence" enacted after debate has been slightly amended. "Workplace violence" under the OHS Act for purposes of employer obligations and exercise of worker rights means:

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

The third prong of the definition, defining violence as statements or behaviours threatening violence, was added after committee hearings regarding Bill 168.

With the passage of Bill 168 the OHS Act will also require employers to prepare and post a written policy respecting workplace harassment at every workplace where more than five workers are regularly employed. "Workplace harassment" is defined to mean "engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome." This very broad and encompassing definition of "workplace harassment" remains unchanged from the date that Bill 168 was first introduced in April, 2009.

2. Workplace Violence And Workplace Harassment Programs

Employers are to develop and maintain programs to implement both the workplace violence policy and the workplace harassment policy. Employers need to be aware that the specific and detailed requirements to prepare violence prevention programs and workplace harassment programs differ significantly under Bill 168.

Workplace violence programs require the following:

- measures and procedures to control risks identified in a violence risk assessment (discussed below);
- measures and procedures for summoning immediate assistance when workplace violence occurs or is likely to occur;
- measures and procedures for workers to report incidents of workplace violence to the employer or supervisor; and
- the means by which the employer will investigate and deal with incidents or complaints of workplace violence.

The program required to protect workers from workplace harassment may be more limited.

Minimum mandatory requirements are that the program:

- include measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor; and
- set out the means by which the employer will investigate and deal with incidents and complaints of workplace harassment.

3. Risk Assessments For Potential Workplace Violence

Bill 168 requires that employers assess risks of workplace violence that may arise from the nature of the workplace, the type of work, or the conditions of work. No assessment is specifically required under the OHS Act for risks of workplace harassment. The employer's risk assessment is required to take into account:

- circumstances that would be common to similar workplaces; and
- circumstances specific to the workplace.

Once complete, the employer must advise the joint health and safety committee, health and safety representative, or workers directly (if there is no committee or representative) of the results of the assessment and provide a copy of the assessment if in writing. Workplaces must be reassessed for risks of workplace violence as often as necessary to ensure that the policy and program continue to protect workers from workplace violence.

4. Required Worker Training Respecting Violence And Harassment

The amendments require that employers train workers in the contents of workplace violence and workplace harassment policies.

The employer's obligation to provide information and training under section 25 of the OHS Act and a supervisor's duty to advise workers of any potential hazard under section 27 OHS Act will also include a new and rather controversial obligation. The amendments will require the employer and supervisor to provide information, including personal information, related to risks of workplace violence from a person with a history of violent behaviour (for example a patient, customer or another worker) if the worker can be expected to encounter that person during the course of their work, and there is a risk of violence likely to expose the worker to physical injury. Disclosure of personal information must be limited to that information reasonably necessary to protect the worker from physical injury.

5. New Worker Rights To Refuse Work For Workplace Violence

The amendments contained in Bill 168 clarify the right to refuse work for conditions in the workplace that constitute "workplace violence." Historically, it has not been entirely clear that a worker may refuse work for workplace violence. The OHS Act is now amended to permit a worker to refuse work if "workplace violence is likely to endanger himself or herself," in addition to other grounds upon which a worker may refuse work. There is no amendment to the OHS Act to permit a worker to refuse work where they believe that workplace harassment is likely to endanger the worker.

Notably, Bill 168 changes the obligation of a worker to remain near his or her workstation until an investigation is completed. Once the amendments contained in Bill 168 take effect (six months after receiving Royal Assent), the work refusal provisions in the OHS Act will require that the refusing worker remain in a safe place "that is as near as reasonably possible to his or her workstation and available to the employer or supervisor for the purposes of the investigation." As such, this change will apply to all work refusals, not just those exercised on the new ground of workplace violence. This change was not amended from the April 2009, introduction of Bill 168.

Bill 168 does not alter the limited right to refuse work for those employed in certain occupations such as police officers, firefighters, health care workers and workers in correctional institutions.

6. Employer Obligations To Respond To Domestic Violence

The most novel and controversial provisions of the proposed Bill 168 amendments to the Ontario OHS Act are those related to domestic violence. The original proposals in the Bill 168 from April, 2009, have passed without amendment. The OHS Act will now require an employer to take every precaution reasonable in the circumstances for the protection of a worker if the 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.

Ontario will be the only jurisdiction in Canada to have OH&S provisions specifically requiring that the employer react to domestic violence. No specific reasonable precautions have been outlined. Ordinarily the obligation to take every precaution reasonable in the circumstances requires that the employer have regard to available standards, guidance from public organizations, and engage in creative solutions to protect workers from novel or complex workplace risks.

7. Reporting Workplace Violence To Ontario Ministry Of Labour

The amendments now require that employers prepare a notice under section 52 of the OHS Act in the event that a worker is disabled from their regular duties, or requires medical attention, as a result of workplace violence. These provisions are added to section 52 of the OHS Act.

Amendments to Canadian OH&S & Environmental Legislation Identified in January 2010

Construction Projects (Occupational Health and Safety Act): O. Reg. 443/09 replaces the standards for fall protection in subsection 26.1(3), amends subsections 26.3 (4) and 26.3 (6) to (8) regarding guardrail systems. Subsections (1) and (3) of s. 27 regarding working near water are amended and 27(6) is repealed. Section 116 regarding use of stilts is replaced, subsection 181(1) is amended and section 228 regarding precautions concerning services is replaced. Subsections 236(8) regarding support systems and 280(4) regarding shoring and bracing for shafts are repealed.

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WORKWELL AUDIT PROGRAM/MAINTENANCE PROGRAM



Initially, Raising The Standard Consulting Inc. will provide you with a true assessment of your workplace hazards and required systems to control these hazards. Through our assessment we will determine where you stand in health & safety and develop the systems that will compliment your organization's daily activities. Secondly, we will provide you with an on-going health & safety maintenance program to help you stay on track. We will conduct an annual accident analysis, a compliance audit that complies with Workwell and identify a yearly health & safety objectives/action plan. We will provide immediate response to health & safety questions, attend safety meetings and provide reviews of your health & safety program. In addition we will keep you informed of health & safety issues that effect your workplace.

Raising the Standard Consulting Inc. has a proven record of excellence in providing cost-effective solutions in a spectrum of EH&S issues through the development of exceptional policies and programs.

Is Your Company at Risk?

Over the past 15 years, RTS Consulting Inc. has attained excellence in various industries including retail product distribution, food industry, construction, dry chemical manufacturing, mining and steel manufacturing to name a few. Last year alone we managed more than 20 Workwell audit compliance projects and have maintained 100% pass rate. We have saved the last 10 organizations over \$1,000,000 in levied surcharges! That's an average of \$100,000 per client. Why trust your success to anyone else.

If you're desperate for answers, we're destined to help.

Exclusive Offers

from RTS Consulting Inc.

PUBLIC TRAINING COURSES

*The following is an example of a few of the training courses we offer.
For a full list, please contact us.*

JHSC Certification Part 1 Training (2-day course)

\$350.00 +GST - 2-day Course
Mar. 9-10, Apr. 6-7, May 4-5

JHSC Certification Part 2 Training (length depends on industry)

Service Sector (office, hotels/restaurants, retail, etc.)
\$245.00 +GST - 1 day:
Mar. 23, Apr. 20, May 18

Healthcare, Warehouse/Distribution, Manufacturing
\$350.00 +GST - 2 days:
Mar. 23-24, Apr. 20-21, May 18-19

Construction (including 1 day fall Protection)
\$475.00 +GST - 3 days:
Mar. 23-25, Apr. 20-22, May 18-20

Sign-Up Now >>

WEB-BASED training

Raise the safety, health, and productivity of your employees to the top of your agenda and provide training solutions that deliver real results. We provide web-based training programs for the convenience of your organization. Please visit our web-site to register.



Hand Tools and Automotive Lifts

Identify the Hazards and Controls Regarding:
Hand Tools, Hoists, Fixed, Power, Electrical and Pneumatic Tools, Guarding, Powered Lifting Equipment, Automotive Lifts.

Joint Health and Safety Committee

Participants will be able to: know the legislative requirements for establishing a JHSC, describe the powers, functions and duties of JHSCs and their members, describe the activities of an effective JHSC, etc.

Machine Safety and Lockout / Tagout Procedure

Learn about Workplace Responsibilities, Machine Guarding and the Law, Understanding Machine Related Hazards Lockout / Tagout, Applicable Legislation, Hazard Identification, Lockout Procedures.

Health, Safety and The Law

Provide participants with a working knowledge of the Occupational Health and Safety Act and related legislation and more.

Manager and Supervisor Safety Orientation

Learn about Management Responsibilities, Right to Refuse, JHSC, Hazard Recognition, Workplace Accidents, Emergency Procedures, New Employee Orientation, Transfer and Promotion, etc.

Material Handling

This course is designed to teach workers about proper material handling techniques. Upon completion of this course, workers should be able to: describe what factors contribute to back injuries, explain proper lifting techniques, etc.

Accident Investigation

The goal of this module is to ensure you will be able to: recognize the need for an investigation, investigate the scene of the accident, interview victims & witnesses, determine root causes, compile data and prepare reports, make recommendations, etc.

Health Hazards: Recognition, Assessment and Control

The goal of this module is to ensure you will be able to: understand the law pertaining to health and safety hazards, define occupational injury and illness, understand the four types of workplace health hazards, etc.

Workplace Inspection

Provide participants with an understanding of their legal rights and responsibilities with regard to workplace inspections and to prepare them for carrying out effective workplace inspections.

Slips, Trips and Falls

Objective of this training is to: understand the causes and effects of falls in the workplace, to understand legislation relating to slip, trip and fall hazards, to be able to identify potential slip, trip and fall hazards, etc.

WHMIS

Explain how WHMIS is implemented in law, explain how the law defines a controlled product, explain how the law defines hazardous ingredients, identify the exclusions, etc. Register to access the complete training material.

Worker Safety Orientation

Worker Responsibilities, Right to Refuse, Joint Health and Safety Committee, Hazard Recognition, First Aid, Workplace Accidents and more.

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