

Summary of changes to workers' compensation legislation

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During the past few months, the HSA office has received several inquiries about Bill 14, the new workers compensation legislation that was enacted by the provincial government last year. In response to those questions, HSAs occupational health and safety experts have produced this article, outlining the key changes in the legislation.

In October of 1999, the provincial government proclaimed Bill 14, the Workers Compensation (Occupational Health and Safety) Amendment Act, 1998. This new legislation adds a significant new section to the *Workers Compensation Act* by creating a Part 3 of the *Act* which includes approximately 125 new sections outlining an occupational health and safety framework for workers across the province. With this legislation's proclamation, all employers must now be in compliance.

Large portions of the legislation are a restatement of that which already exists in either regulation, policy or practice. However, the introduction of the legislation is significant for two reasons. First, by "bumping up" various provisions from either policy or regulation to legislative status, the security of the law prescribing health and safety is enhanced. Secondly, in the course of drafting the legislation, the government introduced several elements that represent entirely new features to our health and safety system.

Summary of changes

â€¢ **Health and safety committees are now required at ALL worksites with 20 or more employees.** Worksites with between nine and 19 employees are required to appoint a worker representative who has the same rights as worker committee members employed at the larger worksites.

â€¢ **The employer is now required to respond to a recommendation of the health and safety committee within 21 days of receiving it.** If the employer turns down the request or fails to respond within the appropriate time, the *Act* specifically provides for the right of either co-chair of the committee (i.e. worker or employer) to contact the WCB and request that an officer attend at the worksite and investigate the matter.

â€¢ **The Act requires the employer to provide a minimum of eight paid hours a year to each member of the committee for the purposes of attending a WCB-approved course on health and safety.** The employer is also specifically required to provide to the committee all equipment, premises and clerical personnel necessary to carry out its functions (i.e. equipment for testing air quality). Finally, the *Act* specifically sets out that all time spent by the committee members attending meetings *and other time that is reasonably necessary to prepare for meetings of the committee and to fulfil the other functions and duties of the committee* is to be deemed as time worked for the employer and compensated accordingly.

â€¢ **The new Act gives to workers the right to appeal decisions made by the WCB with respect to health and safety.** For example, if a WCB inspector visits a worksite in response to a worker complaint about an unsafe condition, but fails to write an order against the employer, the worker is now entitled to appeal the failure to write an order. This insures a greater level of accountability on the part of the WCB officer. At the same time, the *Act* also codifies the only recently developed practice of notifying workers and the union in the event that the employer chooses to appeal an order or decision of the WCB and allowing workers to participate in that appeal.

â€¢ **The new legislation provides for better access to information for unions and workers regarding the health and safety record of the workplace.** Upon request, the WCB must provide to either the worker or the union, a detailed summary of the workplace health and safety history.

Right to refuse changes remain unresolved

Notwithstanding many improvements under Bill 14, one area which remains the subject of dispute is that which deals with a workers right to refuse unsafe work. Under Part 5 of the legislation, new language was proposed that many believed would jeopardize the strength of this long-standing and hard-won right. In particular, the new language stated in part that:

"work is unsafe if conditions that would result if the work were done are such that there is, or would be, a **significant** risk that the worker or another person might be killed, **seriously** injured or suffer **serious** illness" (emphasis added).

By including the terms "significant" and "serious," many were concerned that the standard for what constituted an unsafe situation attracting the right to refuse had been raised to the detriment of worker safety.

The governments response to these concerns was to not proclaim Part 5 of the *Act*. As a result, the language that existed in the regulations and which governed the right to refuse prior to the proclamation of Bill 14, remains in place.

While this language is better in defining the right, by failing to proclaim the whole of Part 5, the government also backed away from other new and improved rights that would have been conferred upon workers in other sections of Part 5 (that is, the right to appeal the decision of the Board officer and the right of other workers affected by the work refusal to receive ongoing pay if their ability to continue working is limited by the work refusal).

In any event, it is important for all workers to understand that the right to refuse and the process around the exercise of that right is still defined under section 3.24 of the Regulation.

More detailed information about the new *Workers Compensation Act* can be obtained by contacting HSA, or by contacting the WCB films and posters section at 604-276-3068. All employers are obliged to make an up-to-date version of the Act available to any worker when requested.

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