

OHS Code REVIEW

Publication of Bill 47 has shown the full extent of the impact workers and Joint Workplace Health and Safety Committees that will incur. The curtailment of Rights that were implemented by Bill 30 are being rolled back.

Up for review right now are:

- › **Part 4 Chemical hazards, biological hazards and harmful substances**
- › **Part 6 Cranes, hoists, and lifting devices**
- › **Part 10 Fire and explosion hazards**
- › **Part 11 First Aid**
- › **Part 13 Joint worksite health and safety committees**
- › **Part 15 Managing the control of hazardous energy**
- › **Part 16 Noise exposure**
- › **Part 17 Overhead power lines**
- › **Part 18 Personal protective equipment**
- › **Part 20 Radiation exposure**
- › **Part 33 Explosives**
- › **Part 36 Mining safety**
- › **Part 37 Oil and Gas**

Due to the extent of the Code Review, I advise that UNA focus on Part 11 First Aid and Part 13 Joint Workplace Health and Safety Committees.

I am not recommending a focus be placed on the rest of the Parts under review. Part 18 Personal Protective Equipment wording has changed from prescriptive types of PPE to plain language that is easy to understand. If UNA recommended membership to review the entirety of the Code review, I believe this would be overwhelming for membership.

In this paper there will be references to the Employer's point of view on Bill 47.

JWHSC participation in Work Refusals, Potential Serious Injuries, and Workplace Inspections has been eliminated.

This will be highlighted in the discussion of Part 13.

Notification to the JWHSC is the only requirement written into the OHS Act for Work Refusals, and Potentially Serious Injuries Participation by JWHSC has been eviscerated.

JWHSCs were under allowed access to a work refusal under Bill 30. A JWHSC member was permitted to accompany the worker refusing work to inspect the worksite with the employer. That has now been eliminated. The JWHSC was to participate in the process of assisting the worker and had input into the writing the report.

All that the employer is now obligated to do is provide a report to the JWHSC and the worker.

This language predates Bill 30.

OHS Act Bill 47

Section 17

- [13] If a worker who receives a report under subsection [12] is of the opinion that an undue hazard still exists, the worker may notify an officer.
- [14] Where the employer becomes aware that a notification to an officer was made under subsection [13], the employer shall advise any other worker that the employer assigns to do the work, in writing, of
- [a] the first worker's refusal,
 - [b] the reasons for the refusal, and
 - [c] the reason why, in the opinion of the employer, the work does not constitute an undue hazard to the health and safety of any person or that an undue hazard is not present.
- [15] An officer who receives a notification under subsection [13] shall investigate the matter and prepare a written record of the investigation and the officer's findings, and shall give the joint health and safety committee if there is one, the health and safety representative if there is one, the worker and the employer a copy of the record.

In the case of a serious injury or a PSI, the elimination to JWHSC notification to be notified and provide input into the investigation is eliminated and a copy of the employer's report to JWHSC is all that is required.

Bill 47 OHS Act

Section 33

- 1 [d] provide a copy of the report to a Director, the joint health and safety committee, if there is one, or health and safety representative, if there is one, or, if there is no committee or representative, make it available to workers once the investigation is complete.

Code Review

Part 11 First Aid

CURRENT OHS CODE LANGUAGE.

Training standards

- 177 (1) A person or agency that provides training in first aid must enter into an agreement with a Director of Medical Services if the person or agency is to provide training in first aid to workers under this Code.
- 177 (2) An approved training agency that provides the first aid training to candidates for a certificate in emergency first aid, standard first aid or advanced first aid must comply with the terms of the agreement with a Director of Medical Services.
- 177 (3) A worker who successfully completes the training of an approved training agency must meet the standards for a certificate in emergency first aid, standard first aid or advanced first aid that are adopted by a Director of Medical Services in consultation with the Joint First Aid Training Standards Board.

PROPOSED CHANGE

- 177 (1) An employer must ensure that a worker who provides first aid has successfully completed a workplace first aid training course from an agency approved by a Director or a Director of Medical Services in accordance with this section
- 177 (2) Section 177 does not apply to a hospital, medical clinic, physician's office, nursing home or other health care facility where a physician or a registered nurse is always readily available
- 177 (3) Propose to repeal

Effect. Under current language, where an acceptance agreement is in place, first aiders are required to have appropriate training to assess dangerous situations. This change eliminates the requirement to assess. With no requirement to assess, will a First Aider have the Right to Refuse if the undue hazard may endanger the health and safety of another person? Could this place the First Aiders life in danger?

Example. A patient walks into a hospital covered in white powder, asking for help. The hospital is on a dangerous goods Highway. The chemical smell is overwhelming and produces chemical burns to exposed skin. The First Aider has not taken the CBRN training. Under the proposed language there is no training to be given by the employer to the RN on assessing dangerous situations. Would the First Aider be legally required to provide assistance?

CBRN training would have to include use of the appropriate PPE for such a situation in which the RN would know what steps to take which would also be covered in assessments in First Aid training which is not covered in the educational institutions.

This also flows from Bill 47's Right to Refuse language.

Bill 47 OHS Act Section 17

- (2) Subject to this section and section 5, a worker may refuse to work or to do particular work at a work site if the worker believes on reasonable grounds that there is an undue hazard at the work site or that the work constitutes an undue hazard to the worker's health and safety or to the health and safety of another worker or another person.
- (3) When exercising a right to refuse to work or to do particular work under subsection (2), a worker shall ensure, as far as it is reasonable to do so, ***that the refusal does not endanger the health and safety of any other person.***

What happens when an RN is at a worksite and there is no PPE available because the employer has locked up the PPE? If a situation occurs in which the RN is required to attend to another co-worker or a patient, can the RN invoke the right to refuse or has this language forfeited the Right to Refuse?

Acceptances

- 20 (1) A Director may issue in writing an acceptance to a person or class of persons if, in the Director's opinion, an alternative tool, appliance, personal protective equipment, equipment, standards, work process, first aid service or first aid supplies or equipment at a work site provides equal or greater protection than that provided for by the OHS Code for persons affected by the tool, appliance, personal protective equipment, equipment, standards, work process, first aid service or first aid supplies or equipment.

This language eliminates any acceptance to be put in place for First Aiders where an RN or physician is readily available in healthcare settings.

CURRENT OHS CODE LANGUAGE

Duty to report injury or illness

- 182 If a worker has an acute illness or injury at the work site, the worker must report the illness or injury to the employer as soon as is practicable.

PROPOSED LANGUAGE

- 182 If a worker has an acute illness or injury at the work site, the worker must report the illness or injury to the employer **or supervisor** as soon as is practicable.

Effect

This could bring in reporting of illness or injuries into Bargaining Unit job duties.

Part 13 Health and Safety Committees and Health and Safety Representatives

Section 197 Currently the Terms of Reference (TOR) are to be drawn up by the JWHSC. The change requires the Employer must draw up a TOR with the JWHSC. The concern here is that if there is disagreement about the TOR, the employer can impose a TOR that could affect co-chair selection, JWHSC membership, frequency of meetings, replacement of membership, the resolution process site inspections, and term in office,

Terms of reference

197 Each joint work site health and safety committee must establish terms of reference

- (a) that ensure, to the extent practicable and subject to section 22(1) of the Act, that the committee's membership provides appropriate representation of all relevant occupational health and safety concerns at the work sites that the committee relates to,
- (b) that establish a process for replacing a member of the committee during the member's term of office,
- (c) that establish a dispute resolution process to be used in cases where the committee has failed to reach consensus about making a recommendation under section 19(f) of the Act, and
- (d) that establish a process for coordinating with other joint work site health and safety committees established by the same employer or prime contractor, if there is one.

Repeal Section 198

Additional duties of a joint work site health and safety committee

198 A joint work site health and safety committee must inspect each work site at least once before each quarterly meeting required by section 27(1) of the Act, to identify health and safety hazards that have not been controlled.

Employer's Viewpoint

- › Renamed Joint Health And Safety Committee no longer required to carry out work site inspections
- › Mandatory participation by the JHSC in incident investigations no longer required

Repeal Section 199

Disclosure of personal information

199 A joint work site health and safety committee, its individual members, or a health and safety representative, must not disclose a worker's personal health information or the personal information of an identifiable individual unless the disclosure is required.

Repeal Section 200

Duties of employers, contractors and prime contractors

200 (1) The employer, contractor and prime contractor, if there is one, must

- (a) consult and cooperate with all joint work site health and safety committees and all health and safety representatives for their work sites to develop policies, procedures and codes of practice required by the Act, regulations and this Code,
- (b) provide members of all joint work site health and safety committees and all health and safety representatives for their work sites with reasonable opportunity to inform workers on matters affecting occupational health and safety,

- (c) ensure that members of all joint work site health and safety committees and all health and safety representatives for their work sites are allowed to examine records, policies, plans, procedures, codes of practice, reports or manufacturer specifications that must be maintained under the Act, regulations and this Code, and
- (d) distribute to all joint work site health and safety committees and all health and safety representatives for their work sites any information or documents addressed to the committee or representative as soon as reasonably practicable after the information or document is received by the employer, contractor or prime contractor, if there is one.
200(2) Subsection (1)(d) does not apply to a report referred

Employer's Viewpoint

- › Reduction in information that must be provided to the JHSC
- › Only information related to “work site hazards, controls, work practices and procedures must be provided, rather than “all health and safety information”

Repeal Section 201 OHS CODE and Regulations Section 45(1)(2)

Training standards

201 For the purposes of providing training to co-chairs and members of a joint work site health and safety committee and to health and safety representatives under section 29(1) and (2) of the Act, the employer or prime contractor, if there is one, must use an organization designated by the Minister under section 83 of the Act to provide the required training.

OHS Regulations

Training

- 45 (1) The Minister shall establish criteria that must be included in a curriculum for training co-chairs of a joint work site health and safety committee and to health and safety representatives under section 29(1) and (2) of the Act.
- (2) The criteria to be included in the curriculum referred to under subsection (1) must include the following:
- (a) the roles and responsibilities of co-chairs on joint work site health and safety committees and health and safety representatives;
 - (b) the obligations of work site parties;
 - (c) the rights of workers;
 - (d) the manner in which the organizations will address the responsibilities of both workers and employers in the delivery of the training;
 - (e) any other criteria established by the Minister.

Replace with OHS Code

Section 201 For the purpose of providing training to co-chairs and members of the joint work health and safety committee and to the health and safety representatives under section 29(1) and (2) of the act, the employer or prime contractor, if there is one, must use an organization designated by the Minister under section 83 of the Act to the provide the required training.

Current OHS Act allows for paid training and is prescriptive

Time away for committee or representative work and entitlement to pay

- 30 (1) A member of a joint work site health and safety committee or a health and safety representative is entitled to take the following time away from the member's or the representative's regular duties:
- (a) the period of time that the committee or representative determines is necessary to prepare for each committee meeting or meeting with the employer or prime contractor as applicable;
 - (b) the time required to attend each meeting of the committee, or with the employer or prime contractor, as applicable;
 - (c) the time required to attend health and safety training, as approved by the committee and the employer, or by the representative's employer;
 - (d) such time as the committee or representative determines is necessary to carry out the member's or the representative's duties as a committee member or representative under this Act, the regulations and the OHS code.
- (2) A member of a joint work site health and safety committee or a health and safety representative is deemed to be at work during the times described in subsection (1) and is entitled to be paid for those times by the member's or the representative's employer at the member's or representative's applicable rate of pay.

Bill 47 OHS Act

Section 13(7) Health and Safety Committee, Representatives and Program

- (7) A joint health and safety committee shall hold its meetings and carry out its duties and functions during normal working hours.

This is the only reference where JWHSC will be held during normal working hours with no reference to paid time off or the applicable rate of pay for time off.

Health and Safety – Employer's Viewpoint

Detailed Health and Safety Program requirements to be removed:

- › Health & safety program to promote continuous improvement in OHS
- › Employers and workers to have flexibility to develop programs best suiting their workplace
- › Bill 47 removes mandatory program elements
- › Labour and Immigration to provide guidelines to help employers and workers develop health and safety programs

Repeal

Inspection of work site with officer

- 202 (1) An officer conducting an inspection at a work site shall, where feasible, request the co-chair who represents the workers on the joint work site health and safety committee, or the co-chair's designate, or a health and safety representative, as applicable, to be present at the inspection.
- 202 (2) Where, under subsection (1), an officer requests the co-chair who represents the workers on the joint work site health and safety committee, or the co-chair's designate, or a health and safety representative to be present at an inspection, the employer must provide that person with time away to attend the inspection.

Bill 47 Act

Inspection of work site with officer

- 15 When an officer inspects a work site, the officer may request any member of the joint health and safety committee, their designates or a health and safety representative to be present at that inspection.

Effects

Removes the obligation of the OHS Officer to have a JWHSC person accompany the inspections. The conflict is that the employer will accompany the OHS Officer and provide the employer perspective and there does not have to be any worker perspectives. This takes us back to the days when OHS Officers would say they didn't want to damage the relationships they had with the employers

Approvals

- 43 (1) To be considered for an approval under section 16(4) or 17(1) of the Act, an employer must apply for an approval in accordance with section 56 of the Act.
- (2) An employer must provide the following information for each work site affected in an application for an approval:
- (a) the name and contact information for any existing worker co-chair of a joint work site health and safety committee, any existing health and safety representative, and any unions representing workers at the work site;
 - (b) the address of the work site;
 - (c) the number of workers at the work site;
 - (d) the type and nature of the work at the work site;
 - (e) the number and nature of the injuries or incidents reported and investigated under section 40 of the Act during the previous year;
 - (f) the proposed procedure for workers to communicate work site specific health and safety issues to the joint work site health and safety committee and any health and safety representative;
 - (g) the proposed composition of the joint work site health and safety committee;
 - (h) the proposed alternative to a health and safety representative;
 - (i) the proposed schedule for work site inspections;
 - (j) documentation showing support for the application by workers or worker representatives;
 - (k) any other information requested by the Director.
- (3) In considering whether to issue an approval under section 16(4) or 17(1) of the Act, the Director may consider
- (a) any of the information provided under subsection (2),
 - (b) any effect an approval could have on the health or safety of a worker or other person,
 - (c) the relevant history of compliance or non-compliance with the Act, regulations or the Occupational Health and Safety Code, and
 - (d) any other criteria the Director considers appropriate.
- (4) If an approval is issued under section 16(4) or 17(1) of the Act and there are any subsequent changes to any of the information provided to the Director under subsection (2), the employer must notify the Director in writing of the changes as soon as reasonably practicable.

Bill 47 OHS Act

- 22 (1) A Director may, in accordance with the regulations or the OHS Code, issue an approval to any person provided the person meets any terms or conditions that the Director considers necessary to maintain the health or safety of a person.
- (2) A Director may compel a person to provide the Director with any information that the Director determines is necessary for considering whether to issue an approval including, without limitation,
- (a) a statement of why it is appropriate to issue an approval, and
 - (b) specific details about the circumstances and work site a Director needs to determine whether the approval should be granted
- (3) A Director may impose terms and conditions the Director considers necessary on the approval and those terms and conditions are part of the approval.
- (4) A person who is issued an approval shall ensure that the approval or the original legislative requirement is complied with.
- (5) The Director shall prescribe in the approval the duration of the approval.
- (6) The Director may vary, suspend or revoke the approval at any time.
- (7) The *Regulations Act* does not apply to an approval issued by a Director.

Effects

As a result of these changes, the Director no longer must consult with the workers of the JWHSC. The JWHSC is therefore cut out of the process. There is no process for notification of workers so workers may not even know they are working under an approval.