A Worker's Guide to the Occupational Health and Safety Act

March 2017

OPSEU
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Introduction

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OPSEU produces and regularly updates this guide to provide members with basic information and interpretation of the Occupational Health and Safety Act (OHSA). It answers key questions about your rights and your employer's legal obligations and describes the powers of Joint Health and Safety Committees (JHSC) and health and safety representatives (HSR). The health and safety case law section is quite old, but will still provide you with some of the major rulings on appeals and reprisal complaints that further clarify the application of the Act.

Amendments to Ontario's 1979 Occupational Health and Safety Act often follow workplace tragedies that illustrate weaknesses in the legislation and in government enforcement. In 2010, the Act included workplace violence after the tragic workplace murder of a nurse in Windsor, Ontario. In 2012, Bill 160 reorganized Ontario's health and safety system with a new prevention office and other changes after the senseless deaths on Christmas Eve 2009, when four construction workers in Toronto were killed and one injured when the swing-stage they were working on collapsed.

In 2016, after some high-profile harassment complaints hit the news, the provincial government used Bill 132 to amend the OHSA in regards to workplace sexual harassment and harassment. The changes mean more transparency and include some "natural justice" language within an employer's mandatory harassment program. Harassment investigations, for example, must be "appropriate in the

circumstances." Complainants and respondents must receive, in writing, investigation results and information about corrective action taken where harassment is alleged and/or has occurred. Employers must maintain confidentiality as much as possible unless disclosure is necessary to conduct an investigation, take corrective action or conform to law.

We know that health and safety protection does not come automatically. Change does not come about when the experts release a report or the government changes the law. Improvements come only when workers and their union go beyond focusing on the "technical" and by becoming knowledge activists. Knowledge activists demand safe and healthy workplaces, they do the research, and interact face-to-face with workers to develop collective strategies for action.

Learn your rights as described in this booklet and use them strategically to participate collectively in health and safety activities in your workplace. Whether you are a worker, a union steward or you have taken on the role of a health and safety representative or sit on a Joint Health and Safety Committee, you can play an important role in making change. In turn, your efforts to improve health and safety in Ontario workplaces show employers, policy makers and governments that safe and healthy workplaces are a priority, and that Ontario laws need to be strengthened, not weakened, to protect the lives of Ontario workers. Your union is committed to help—this Guide has been prepared to assist workers in these efforts.

January, 2017

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to the
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PART A:

What's new?

This latest edition of OPSEU's Worker's Guide incorporates information about key changes made in 2015-2016.

New certification training standard

- Certification training must meet the criteria set out in the Ministry of Labour's (MOL) "Joint Health and Safety Committee Certification Training Program Standard" found on the MOL website.
- Part One requires at least 19.5 hours of instruction (three days), of which 6.5 hours (one day) may be delivered by e-learning. Part Two training must be 13 hours (two days) minimum. Part Two must be taken within six months of Part One.
- A refresher course will be required every three years or certification will expire.

Bill 132 changes regarding sexual harassment and harassment

- The Act includes a definition of workplace sexual harassment and adds workplace sexual harassment to the definition of workplace harassment.

- The Act adds additional requirements for employers to develop and maintain a harassment program (with JHSC consultation) that specifies:
    - Measures and procedures to report harassment to someone other than the employer if the employer is the alleged harasser;
    - How information will not be disclosed until necessary to investigate or take corrective action;
    - That an investigation is conducted that is appropriate in the circumstances;
    - Workers are given the results of the investigation and information on any corrective action in writing. The alleged harasser will get the same information if they are also an employee.
- A code of practice has been developed for assistance in interpreting the changes and is available on the MOL website.

New noise regulation 381/15

- The Act sets a maximum time-weighted noise exposure limit of 85-decibels over an eight-hour shift extended to all workers when noise requirements are removed from the industrial and mining regulations This is a new noise regulation, effective July 1, 2016.

- Employers must implement a hierarchy of controls to prevent noise exposure, including engineering controls, workplace practices and personal protective equipment.
- Employers must provide training and instruction to workers using hearing protection devices.

Bill 70 amendments to the OHSA

Effective December 8, 2016, Bill 70, "Building Ontario Up for Everyone (Budget Measures) Act" amended 26 Acts, including the OHSA. The amendments:

- Add a definition of "health and safety management system" and allow the Chief Prevention Officer (CPO) to set criteria for and publish and amend standards that health and safety management systems must meet in order to be considered accredited health and safety systems in Ontario.
- Allow the CPO to recognize and accredit an employer who applies if the employer shows that they are a user of an accredited health and safety management system or if they have met the criteria set for such a standard.
- Allow the CPO to delegate powers regarding accreditation (and some other existing provisions regarding certification training) to any person, including persons outside the Ministry.

Application of the Act

Who is covered by the law?

- The Occupational Health and Safety Act covers almost all workplaces in Ontario. A workplace is any place "at, upon, in, or near" where a worker performs work. The Act applies to workers, employers, supervisors, contractors, owners of premises and suppliers of materials and equipment.
- Public school and university teachers are also covered by with the enactment of Regulations 191 and 307.
- Farming operations such as mushroom, greenhouse, dairy, hog, cattle and poultry farming are covered by the Act with the enactment of Regulation 414/05 as long as they have at least 1 paid worker.
- "Worker" in the OHSA also includes co-op students and unpaid interns giving them the same rights as paid employees.

Who is not covered by the Act?

- The Act does not apply to work performed by an owner/occupant or domestic servants in a private residence.

  Sec. 3, Sub. 1 and 2

- The Act does not apply to workplaces under the jurisdiction of the federal government of Canada.

PART B:

Duties and Responsibilities

What are the duties of the employer?

The employer must:

- Take all reasonable precautions for the protection of workers. This includes taking appropriate measures to protect susceptible or disabled workers (see Part L: Case #6, #7).

  Sec. 25, Sub. 2(h)

- Provide information, instruction and supervision for the protection of workers.

  Sec. 25, Sub. 2(a)

- Ensure that all supervisors have a working knowledge of the Act and regulations as well as any actual or potential hazards at the workplace.

  Sec. 25, Sub. 2(c) (d)

- Ensure all equipment required by the Act or regulations is provided, maintained in good condition and used properly by workers.

  Sec. 25, Sub. 1(a) (b) (d)

- Develop and review annually a written health and safety policy, post it in the workplace, and maintain a program for its implementation.

Sec. 25, Sub. 2(j) (k)

- Ensure that work practices required by the Act and regulations are carried out.

Sec. 25, Sub. 1(c) (d)

- Ensure that health and safety committees and representatives are selected as required.

Sec. 8, Sub. 1 and Sec. 9, Sub. 4

- Cooperate and afford assistance to a joint committee and its members and health and safety representatives in carrying out their duties.

Sec. 25, Sub. 2(e)

- Give a written response to joint committee recommendations within 21 days. This must include a timetable for implementation or reasons for not agreeing with the recommendations.

Sec. 9, Sub. 20 and 21

- Provide joint committees and health and safety representatives with any health and safety reports in his/her possession.

Sec. 25, Sub. 2(l)

- Advise workers of the results of any health and safety reports in his/her possession and make copies available upon request.

Sec. 25, Sub. 2(m)

- Provide a medical surveillance program for workers where required by regulation, pay for all medical tests and travel expenses, and provide paid time off work.

Sec. 26, Sub. 1(h) (i) and Sub. 3

- Carry out training programs for workers, supervisors and committee members where required by regulation.

Sec. 26, Sub. 1(l)

- Prepare written policies to address workplace violence and workplace harassment and review them at least annually.

Sec. 32.0.1, Sub. 1, 2, 3

- Develop and maintain a workplace harassment program that includes measures and procedures to report harassment, including reporting to someone other than the employer if the employer is the alleged harasser, how information will not be disclosed until necessary to investigate or take corrective action, how the matter will be investigated and dealt with, and how complainants and respondents will be informed of results and any corrective action taken.

Sec. 32.0.6, Sub.2

- The employer must consult with the joint health and safety committee or health and safety representative in the development and maintenance of the harassment program.

  Sec. 32.0.6, Sub.1

- For harassment complaints and incidents, the employer must perform a harassment investigation that is appropriate in the circumstances.

  Sec. 32.0.7, Sub.1

- The employer must review the harassment program as often as necessary but at least annually to ensure that it adequately implements the harassment policy.

  Sec. 32.0.7, Sub.1

- Develop and maintain a workplace violence program that includes measures and procedures to control the risks, measures and procedures for summoning immediate assistance when violence occurs or is likely to occur, and that describes how workers can report incidents and how employers will investigate incidents or complaints of workplace violence.

  Sec. 32.0.2

- The employer must assess the risks of workplace violence and advise the JHSC or health and safety representative of the results of the assessment and provide a copy if it is in writing. Reassess the risks as often as necessary to ensure that the workplace violence program continues to protect workers.

Sec. 32.0.3

- Take all reasonable precautions to protect a worker from the hazard of domestic violence which may endanger a worker in the workplace. To meet this obligation, employers must be "aware or ought reasonably to be aware" of the hazard.

Sec. 32.0.4

- The employer must provide workers with information and instruction on the contents of the workplace harassment and violence policies and programs.

Sec. 32.0.5, Sub. 2; Sec. 32.0.7

- Provide a worker with information, including personal information about a person with a history of violent behaviour if the worker can be expected to encounter that person in the workplace and if the worker is at risk of physical injury. The employer is not to disclose more personal information than is reasonably necessary.

Sec. 32.0.5, Sub.3

- If a worker is killed or critically injured at work, the employer must immediately advise an MOL inspector the health and safety representative or JHSC and the union. And within 48 hours, the employer must send the MOL a written report according to the regulations.

Sec. 51, Sub 1

- Provide written notice within four days to the joint committee, health and safety representative and the trade union when workers are disabled from regular work (lost time or no lost time) or require medical attention as a result of an accident, fire, explosion or incident of workplace violence.

Sec. 52, Sub. 1

- Give written notice of any occupational illness of current and former employees to the joint committee, the union and the Ministry of Labour within four days of being advised of such an illness or where a WSIB claim has been filed for such an illness.

Sec. 52, Sub. 2 and 3

- Post inspectors' orders in the workplace and provide joint committees and health and safety representative with copies of these.

Sec. 57, Sub. 10

What are the duties of supervisors?

A supervisor must:

- Ensure that workers comply with the Act and regulations.

Sec. 27, Sub. 1(a)

- Ensure that workers wear or use required protective equipment, and follow all required measures and procedures.

Sec. 27, Sub. 1(b)

- Advise workers of all existing and potential hazards, including workplace violence.

Sec. 27, Sub. 2(a)

- Provide written instruction to workers on measures and procedures to be taken where required.

Sec. 27, Sub. 2(b)

- Take all precautions reasonable in the circumstance for the protection of workers.

Sec. 27, Sub. 2(c)

- The supervisor is responsible to ensure that workers follow all safety procedures. It is not enough to warn workers about dangers or safety rules, and then turn a blind eye to violations. They must tell workers about the hazards and ensure that they follow the safety procedures.

What are the duties of workers?

- Workers must work in compliance with the Act and regulations.

Sec. 28, Sub. 1(a)

- Workers are not required to participate in medical surveillance programs unless they consent to do so. However, under Section 26, Sub. 1 (j) an employer cannot permit a worker to work unless the worker has undergone medical examinations or tests required by a regulation and is found fit to work.

Sec. 28, Sub. 3

- Workers must follow all required procedures and wear or use all required protective equipment.

Sec. 28, Sub. 1(a) (b)

- Workers must report all safety defects in equipment or any hazard to the supervisor or employer.

Sec. 28, Sub. 1(c) (d)

- Workers must not remove any required protective devices.

Sec. 28, Sub. 2(a)

- Workers must report all violations of the Act and regulations and hazards to the supervisor or employer.

Sec. 28, Sub. 1(d)

- Workers must not work in a manner or use defective equipment that might endanger the worker and others. In this instance a worker has a legal obligation to refuse work.

Sec. 28, Sub. 2(b)

What are the duties of owners and constructors?

- An owner must determine if there is a designated substance on site, prepare a list of the substances and provide this list as part of any tendering information and ensure that constructors receive a copy before entering into a contract. The constructor must ensure that all contractors or subcontractors receive a copy before entering into a contract.

Sec. 30, Sub. 1, 2, 3, 4

- A constructor must give written notice to the Ministry of Labour, joint committee or health and safety representative and the trade union of any accident or unexpected event that occurs on a project even if no one is injured.

Sec. 53

What are the duties of architects and engineers?

- Architects and engineers are liable to prosecution if their advice or certification of a structure endangers workers.

Sec. 31, Sub. 2

What are the duties of directors and officers of corporations?

- Officers and directors are legally liable to ensure that there is compliance with the Act, the regulations and MOL orders.

Sec. 32 (a)

Can directors and officers be found criminally liable?

- Yes. The loss of 26 miners in the Westray disaster in 1992 led to the enactment of Bill C45 in 2004. Bill C45 makes a clear statement in the *Criminal Code* that wanton or reckless disregard for the safety of workers and the public at large in a workplace setting is a criminal offence and that corporate executives, directors and managers could be held criminally accountable.
- Two C-45 convictions have occurred in Canada (both in Quebec). A paving company (Transpave) was fined $100,000 in the death of 23 year-old Steve L'Ecuyer, killed in October 2005 while trying to remove a blockage in a machine. And an owner of a landscaping company was sentenced to 2 years less a day in the community with a curfew when found guilty of criminal negligence causing death when employee Aniello Boccanfuso was crushed by a backhoe against a wall on June 12, 2006.

PART C:

Your right to participate

Where are joint health and safety committees required?

Joint committees are required in the following workplaces:

- All workplaces where 20 or more workers are regularly employed.

Sec. 9, Sub. 2

- All construction projects with 20 or more workers and lasting more than three months.

Sec. 9, Sub. 1(a) and 2(a)

- With the exception of construction projects, in those workplaces where a designated substance regulations applies.

Sec. 9, Sub. 2(c)

- In any workplace where an order has been issued under section 33 of the Act to control toxic substances.

Sec. 9, Sub. 2(b)

How do you calculate the number of workers?

- To determine the number of workers in your workplace, the total number of all full-time and part-time workers

on all shifts must be included. A worker does not have to be on the worksite for a full eight hours to be counted, as long as there is a consistent pattern of employment. Managers and supervisors are also counted.

(See Cases #24 and #25)

What workplaces are excluded from having joint committees?

- A construction project lasting less than three months.

  Sec. 9, Sub. 1(a)

- All workplaces with fewer than 20 workers.

  Sec. 9, Sub. 2(a)

- All workplaces that may be exempted by special regulation.

  Sec. 9, Sub. 1(b)

Can joint committees be requested where they are not required?

- Yes. The Minister of Labour has the power to order the establishment of one or more committees in a workplace or part of a workplace.

  Sec. 9, Sub. 3 and 5

- Negotiated safety committee systems may go beyond the provisions of the Act, such as area-wide, ministry-

wide, agency or campus committees that comprise numerous workplaces. It is vital that these be legally sanctioned by the minister under Sec. 9, Sub. 3, 3.1, 4, and 5. The minister will usually sanction these where a joint request is made by both union and employer.

What about workplaces with more than one location?

- In the case of an employer with several work locations, the requirement for a joint committee applies to each location with 20 or more workers, not to the employer's entire operation.
- Some work operations have scattered work locations where no single worksite has more than 20 workers, but the whole operation may have over 20 employees. In this case, because no one worksite meets the criteria for the establishment of a joint committee, your employer is not compelled to form a committee. If a location has fewer than 20 workers and more than 5, a health and safety representative is required.

Can workers in workplaces with scattered locations request the Ministry of Labour to order a joint committee when one is not required?

- In workplaces with scattered locations where there are fewer than 20 workers in each location, it is sometimes possible to form what is known as a multi-workplace Joint Health and Safety Committee. If workers in scattered workplaces such as this determine that a

multi-workplace JHSC will improve health and safety conditions, they should consider the following two options:

1. A complaint to a Ministry of Labour health and safety inspector about the absence of a joint committee might result in an order from the inspector for the establishment of a joint committee that covers the entire operation (multi-workplace JHSC); or,

2. Under Sections 9 (3) and (5) workers can request that the Minister of Labour order your employer to establish a multi-workplace JHSC that covers the entire operation. When dealing with the union's request, the Minister or his/her designee (usually the regional director) must consider the following:
    - the nature of the work, eg. how hazardous it is;
    - the frequency of illness and injury in the operation or the sector;
    - the existence of health and safety programs and practices;
    - whether the request is made jointly or just by the union or the employer.

The success of your effort will depend on the local union making a strong case for the committee's establishment. The union will have to show that workers face serious

hazards and need an avenue to raise and address them with the employer.

To do this, your local union will have to gather information about the employer's health and safety record. Under Sections 51 and 52, the employer is required to give the union written notification of all injuries, fatalities and occupational illnesses. The union is also entitled to request and receive an annual summary of occupational injury and illness data for that workplace from the WSIB.

Sec. 12, Sub. 1, 2; Sec. 51, Sub. 1; Sec. 52, Sub. 1, 2, 3

Can the workplace parties jointly request the Ministry of Labour to approve one joint committee to cover multiple worksites?

- Yes. Section 9 (3.1) gives the Minister of Labour the power to issue an order that permits an employer to establish **one** joint committee for more than one workplace. In this regard, it is important to note the following:
    - a single joint committee for multiple worksites is illegal unless ordered by the Minister under Section 9(3.1).
    - a submission must by made by the workplace parties which includes a signed agreement between the union and the employer which spells out complete details on how the joint committee is to function.

- the Minister will assess the submission based on the criteria set out in Section 9 (5) as well as any additional criteria that the Minister requires such as location and distance between workplace, travel and related costs, and the ability of members to perform their duties**. Note**: The Ministry of Labour document, "Multi-Workplace Joint Health and Safety Committee Guidance," posted on its website will assist workplace parties to draft a terms of reference for a multi-workplace committee.
- the process is initiated by a letter and submission to a Regional Director at the Ministry of Labour who has been delegated to consider the request and authorized to issue an order.

What is the minimum size of joint committees?

- All workplaces with 50 or more workers must have at least four committee members; at least one half of them must consist of workers selected by the union.

Sec. 9, Sub. 6(b)

- All workplaces with between 20 and 49 workers must have at least two members; at least one half of these must be workers selected by the union (or unions) in the workplace.

Sec. 9, Sub. 6(a)

How large should a committee be to work effectively?

- The Act sets the minimum size of committees. As a rule, it is important to ensure that committees are large enough to represent the concerns of all workers, with representatives from most departments or areas of the workplace.

How must committees be composed?

- All committees must have co-chairpersons, one representing workers and one representing the employer.

Sec. 9, Sub. 11

- All committees must have at least one management and one worker member who have been certified by the Ministry of Labour (MOL) after they have met the certification training requirements established by the MOL. Rights and duties of certified members are covered later in this Guide.

Sec. 9, Sub. 12, 13, and 14

- Worker members on the committee must come from the workplace, while employer members must come from the workplace to the extent possible.

How are health and safety committee members and health and safety representatives chosen?

- A health and safety representative is chosen from among the workers by the trade union (or unions) which represents them.

Sec. 8, Sub. 5

- If there is a union, it (or they) will select worker members to the joint health and safety committee. If there is no union, the workers will select representatives.

Sec. 9, Sub. 8

- If more than one union exists in a workplace, all unions are entitled to participate in the selection of worker representatives to the JHSC. The OHSA does not give non-unionized workers in a largely unionized workplace the right to select their own representative to the JHSC, nor does the Act authorize an employer to specify representation on the JHSC for the non-unionized. However, the union or unions may be under an obligation to consult with the non-unionized workers and agree on a representative.

Sec. 9, Sub. 8
(See Part L: Case #21, #22, #23)

What are the rights and duties of joint committees?

- The committee has the power to identify hazards and make recommendations for their correction.

  Sec. 9, Sub. 18(a) (b) (c)

- The committee has the power to schedule monthly inspections.

  Sec. 9, Sub. 26, 27 and 28

- The committee must receive a written response to its recommendations from the employer within 21 days. This would also include a requirement to respond to worker member recommendations in the absence of joint recommendations. The response must contain a timetable for implementation or reasons why the employer disagrees with the recommendation.

  Sec. 9, Sub. 20 and 21

- The committee has the power to obtain information from the employer on any actual or potential hazard or any experiences, practices and standards of which the employer is aware.

  Sec. 9, Sub. 18(d)

- The committee must be consulted about any health and safety testing being carried out, and has the right to have a worker member present at the beginning of such testing.

  Sec. 9, Sub.18(f)

- The committee must be consulted about hygiene testing strategies developed by the employer and has the right to have a worker member present at the beginning of testing.

  Sec. 9, Sub. 18(e); Sec. 11, Sub. 1, 2, 3, 4

- The committee must be provided with any health and safety reports in the employer's possession. The employer must make workers aware that such reports exist and workers have the right to request copies of health and safety reports.

  Sec. 25, Sub. 2(l), Sub. 25, Sub. 2(m)

- The committee and the union must be given notices of all critical or fatal accidents, accidents resulting in injury, and all occupational illnesses.

  Sec. 51, Sub. 1; Sec. 52, Sub. 1, 2, 3

- The committee, a worker, the union or an employer has the right to request and receive an annual summary of work-related accident and illness data from the Workplace Safety and Insurance Board. The employer must post a copy of the summary in a conspicuous place in the workplace.

  Sec. 12, Sub. 1 and 2

- The committee or the health and safety representative must be given copies of any reports or orders issued to the employer by the MOL inspector. The employer must also post a copy or copies of the reports or orders in a conspicuous place in the workplace. The worker who

made the health and safety complaint may request the report or order from the inspector.

Sec. 57, Sub. 10 (a) (b)

- The committee must have an opportunity to participate in the development and implementation of worker education and training programs required by the Workplace Hazardous Materials Information System (WHMIS) regulations.

Sec. 42, Sub. 1 to 4

- At least one management and one worker member of the committee must become certified after undergoing certification training requirements established by the Ministry of Labour (MOL).

Sec. 9, Sub. 12, 13 and 14

- A committee is required to meet at least once every three months. But it may be necessary to meet more frequently in workplaces that are particularly hazardous.

Sec. 9, Sub. 33

- The Act requires that minutes of meetings be recorded, maintained and made available for review by an inspector. These should indicate the problems raised, their resolution and what action was to be taken by whom.

Sec. 9, Sub. 22

What happens if a dispute arises over committee requirements?

- The minister should be notified of the dispute. The Ministry will refer the parties to private dispute resolution. Should this fail, the minister will make a ruling.

Sec. 9, Sub. 39

Should all joint health and safety committees have a written terms of reference (TOR)?

- It is a good idea to have a terms of reference especially to cover items not specified in the Act, such as who takes minutes, the flow of inspection reports, existence of and use of alternates (if any) and attendance of guests. The TOR may also refer to things covered by the Act, such as inspections, investigations, injury notices etc., but it is very important that we not limit our rights in any TOR. Terms of reference are meant to govern the work of the joint committee, not change the Act.

- The TOR must set out all those procedures, functions, powers and entitlements that are required by the Act as a bare minimum. Additional supports to assist the committee must also be considered. Consult your staff representative for a model agreement to guide your efforts.

- The Terms of Reference should include the following:
    - the composition of the committee;
    - the functions and powers;
    - the entitlements of worker members;
    - procedures for conducting meetings;
    - guests to meetings
    - minutes;
    - quorum;
    - procedures for raising and resolving concerns;
    - procedures for resolving disputes;
    - information entitlements;
    - frequency of meetings;
    - certification training process;
    - health and safety training;
    - how changes in the TOR will occur.
- Remember – only the union can enter into a formal agreement, such as a Terms of Reference, with the employer. OPSEU joint health and safety committee members should consult with their Local union officials prior to finalizing the Terms of Reference document.

What are the rights and duties of worker members of joint committees?

Inspections:

- A worker member selected by the workers on the committee has a right to inspect the workplace at least once a month.

Sec. 9, Sub. 23 and 26

- Where it is not practical to inspect the entire workplace once a month, it must be inspected at least once a year. However, at least part of the workplace must be inspected once in each month in accord with a schedule of inspections that must be established by the committee.

Sec. 9, Sub. 27 and 28

- Inspections do not have to be carried out by the same person. It is possible to select other worker members to conduct inspections.

Sec. 9, Sub. 25

- The worker member conducting inspections must be given information from the employer to assist in the inspection. He or she must report all hazards to the committee. This should be done immediately after the inspection.

Sec. 9, Sub. 29 and 30

- The committee must review reported hazards within a reasonable period of time which may require the committee to meet more frequently than once every three months.

Sec. 9, Sub. 30

Investigations:

- A worker member selected by worker members of the committee has the right to investigate critical or fatal accidents. The worker must report the findings to the committee and the Ministry of Labour.

Sec. 9, Sub. 31; Reg. 834 (Critical Injury-defined)

- Members selected to investigate where workers are killed or critically injured should interview witnesses and collect relevant information. The Act says "investigate."

Testing for hazards:

- A worker member has the right to be present at the beginning of any health and safety testing, including hygiene testing at the workplace.

Sec. 9, Sub. 18(f) and Sub. 19; Sec. 11, Sub. 3 and 4

- The worker member must ensure that the device or area being tested is representative of actual conditions and that the testing equipment and procedures are

appropriate. He or she must be given sufficient time and information to make these determinations.

Do worker members get paid preparation time?

- Yes. Worker members must be given at least one hour paid preparation time prior to joint health and safety committee meetings.

Sec. 9, Sub. 34(a)

Are worker members entitled to paid time off to perform their duties?

- Yes. Workers must be given time off to attend meetings, carry out their duties to inspect the workplace, investigate accidents, represent workers during refusals, witness tests and accompany inspectors.

Sec. 9, Sub. 34 (a)(b)(c);
Sec. 43, Sub. 13; Sec. 54, Sub. 3, 4, 5

- The Act says that the performance of these duties and rights is considered work time, paid at the worker's regular or premium rate of pay.

Sec. 9, Sub. 35 and 36; Sec. 43, Sub. 13; Sec. 54, Sub. 5

How do designated joint committee members become certified?

- Designated worker and employer members must be certified by the MOL after completing the training requirements established by the MOL.

Sec. 1, Sub.1; Sec.9, Sub. 12 to Sub. 17

What if there is more than one certified member?

- If there is more than one certified member, or selection of a new certified member will mean that there is more than one, the union must designate one or more members to act as the certified person(s) to be solely entitled to exercise the rights and duties of a certified member.

Sec. 9, Sub 15

Who pays for certification training?

- The employer must pay you during the training and assume all costs including reasonable expenses associated with the delivery of the training.

Sec. 9, Sub. 36

Who provides certification training and what must be taught?

- The MOL has a list of approved certification training providers posted on its website. Certification training must meet the criteria set out in the MOL's "Joint Health

and Safety Committee Certification Training Program Standard" found on the MOL website.

- Part One requires at least 19.5 hours of instruction (three days), of which 6.5 hours (one day) may be delivered by e-learning. Part Two training must be 13 hours (two days) minimum. Part Two must be taken within six months of Part One.
- A refresher course will be required every three years or certification will expire.
- Within six months of completing Part One, members may apply for a one-time, six month extension in order to complete Part Two of the training. Extension requests are not recommended unless there are extenuating circumstances.
- Because the Act and Program Standards are silent on who can choose the provider, it is important for local unions to negotiate contract language that requires that the training program come from the labour-based Workers Health and Safety Centre (WHSC). This is the only way to ensure that workers receive a quality program.
- Within OPSEU, we have achieved some centrally-negotiated agreements regarding certification training:
    - OPSEU and the Ontario Public Service have had an agreement since the early 1990s that basic certification training for OPSEU members will be provided by WHSC trainers.

- OPSEU and three ministries, (Ministry of Community Safety and Correctional Services, Ministry of Children and Youth Services and Ministry of Transportation) have agreed that the WHSC will provide basic and workplace hazard-specific certification training on an agreed-to list of hazards.

What are health and safety representatives and where are they required?

- A health and safety representative must be selected by the union in all workplaces where more than five, but fewer than 20 workers are regularly employed.

Sec. 8, Sub. 1 and 5

- Where a representative is not specifically required by the Act, the Minister of Labour may order that a representative be selected.

Sec. 8, Sub. 2

What are the duties and rights of health and safety representatives?

- The health and safety representative has the same powers and rights as the joint committee and its worker members, except that the health and safety representative is not required to become certified. In addition the Act is silent on the matter of paid preparation time for representatives.

Sec. 8, Sub. 6 to 16

- The health and safety representative has a legal obligation to inspect the workplace at least once a month, in accordance with an inspection schedule agreed to by the representative and the employer.

Sec. 8, Sub.6

- A health and safety representative has the power to recommend corrective action to the employer.

Sec. 8, Sub. 10

- He or she must receive a written response from the employer within 21 days to all recommendations. This response must indicate a timetable for implementation or reasons for not accepting the recommendations.

Sec. 8, Sub. 12 and 13

Can an employer or supervisor interfere with or obstruct the joint committee or health and safety representative?

- No. The law clearly forbids anyone from interfering, obstructing or providing false information to members of a joint committee or a health and safety representative when they are performing their duties. Complaints should be filed immediately with the inspector should any obstruction occur.

Sec. 62, Sub. 5

PART D:

The right to refuse unsafe work

What is the right to refuse?

- All workers have the right to refuse work they believe may endanger their health and safety.

Sec. 43, Sub. 3

Are there any restrictions on the right to refuse?

- Police officers, fire fighters or workers who are employed in correctional or health care facilities or other residential facilities such as group homes are prohibited from using this right when the hazard is a normal part of their work, or when the act of their refusal directly endangers another person.

Sec. 43, Sub. 1 and 2
(See Part L: Case #8, #9, #10, #11, #14)

Does this mean that these workers cannot refuse in all circumstances?

- Workers have a right to refuse dangerous work, as long as their refusal does not directly endanger another person, and the employer has not taken steps to

address hazards that are regularly present. (See Part L: Case #8, #9. #10, #14)

What are some examples of work refusals for these occupations?

Correctional officers:

- Correctional officers could not refuse to work in what they considered a dangerously overcrowded facility, since overcrowding may occur from time to time as a normal condition of employment.
- However, correctional officers could refuse to work where normally required precautions to handle unsafe conditions created by overcrowding were absent, and the refusal did not directly endanger another person.
- A correctional officer could refuse to deal one-on-one with a violent inmate, when the normal safe work practice requires two or more officers and other special procedures to handle the situation safely.

Ambulance officers:

- An ambulance officer could not refuse to aid an accident victim because a dangerous circumstance exists at the accident site. The work refusal could directly endanger the health and safety of the accident victim.
- However, an ambulance officer could refuse to go out on a routine transfer or non-urgent call if the ambulance

vehicle had a safety defect, or if the officer was not provided with equipment to do the job safely.

- An ambulance officer could also refuse to lift a heavy patient in a routine transfer, or if proper equipment were not available to lift the patient in a safe manner.

Health care workers:

- A psychiatric nurse could refuse to deal one-on-one with a violent patient where two or more people would normally be required to handle the situation safely, and the refusal would not directly endanger another person.

Are teachers restricted from exercising the right to refuse?

- Teachers in elementary and secondary schools cannot exercise the right to refuse when the act of their refusal would place the life, health or safety of a pupil in "imminent jeopardy."

Reg. 857/90

- Unfortunately, the law does not define "imminent jeopardy." nor does it say who determines when "imminent jeopardy" exists.
- The supervisor must investigate the circumstances of the teacher's refusal in the first stage of the refusal. The problem arises when the supervisor investigates and states that the life, health or safety of a pupil is in "imminent jeopardy" if the work refusal continues.
- If the worker continues to refuse because he or she believes that his or her own safety is endangered by

returning to work, an inspector must be called in to the workplace to investigate. In this case, the employer has the burden of proving to the inspector that a situation of "imminent jeopardy" exists. (See Case Law – Case #8. Although Case #8 deals with limited right of hospital workers to refuse, the same principle must be applied to this employer. The employer must bear the burden of proof when seeking to take away the worker's right to refuse.)

Under what conditions can a worker refuse unsafe work?

- A worker can refuse to work where he or she has "reason to believe" that any equipment, machine, device or thing is likely to endanger himself, herself or another person, or if the physical condition of the workplace or workplace violence is "likely" to endanger himself or herself.

  Sec. 43, Sub. 3(a)(b)(b.1)

- Workers have the right to refuse unsafe work when the hazard is a violent or potentially violent person. However, workers described in Sec. 43, Sub. 2 continue to have a limited right to refuse unsafe work. Their refusal cannot endanger the life, health or safety of another person and the refusal cannot be because of a hazard considered to be a normal or inherent part of their job.

  Sec. 43, Sub. 3(b.1)

- Workers can also refuse where any of these is in contravention of the Act or regulations, and this contravention endangers their health and safety.

Sec. 43, Sub. 3(c)

- Conditions do not have to be immediately life-threatening for a worker to refuse.

What are the procedures for refusing unsafe work?

- Workers, supervisors, employers and inspectors must adhere to the following procedures:

First Stage:

1. The worker must report the circumstances of the refusal to the supervisor. The worker must remain in a safe place that is as near as reasonably possible to his or her work station and available to the employer or supervisor for the investigation. The worker is considered to be at work during all stages of the refusal and cannot be reassigned during the first stage of the refusal. (See Part L: Case #11)
2. The supervisor must make available a union appointed representative or worker committee member and investigate the circumstances in the presence of the worker and the representative.

Sec. 43, Sub. 4

3. The supervisor must give the worker an answer as to whether it is safe or unsafe. If the worker is satisfied that the work is safe, then the worker should return to work and the matter is considered resolved.
4.

Second Stage:

1. If the worker has "reasonable grounds" to believe that the work is still unsafe despite the supervisor's answers or corrective measures, then the worker can continue to refuse and a Ministry of Labour inspector must be called in to investigate. The refusing worker, the worker representative or the employer can call the inspector.

Sec. 43, Sub. 6

2. When the Ministry of Labour receives a call requesting that an inspector come to a workplace because of a work refusal, the Ministry staff will attempt to make a determination over the phone whether the work refusal meets their criteria of a valid refusal. In workplaces such as healthcare facilities, developmental services facilities or correctional facilities, inspectors frequently determine over the phone that the circumstances are a normal or inherent part of the job and that the worker does not have the right to refuse. In these cases, even if the MOL inspector makes that decision and downgrades the work refusal to a complaint, workers and their representatives must insist that

the inspector come to the workplace to investigate and to assist.

In other cases, the inspector may determine over the phone that the parties involved have not completed Stage 1 of the refusal. If you and the employer believe that you have exhausted all attempts to resolve the issue, insist that the inspector come to the workplace.

3. The Ministry of Labour inspector must investigate "in consultation" with the worker, the supervisor, and the worker's representative.* Workers should insist that the inspector come to the workplace to investigate.

Sec. 43, Sub. 7

***NOTE:** Prior to June 2001, inspectors had a legal duty to investigate a work refusal "in the presence" of the worker and her/his representative. Now, however, the Act states that the investigation can take place in "consultation" with the parties. However, current MOL policy states that when an inspector makes a determination over the phone that a work refusal has met MOL criteria as a valid refusal and attempts to resolve it internally have been exhausted, an inspector will be sent to the workplace.*

If the inspector will not attend, insist that you are present for any telephone conversations between the employer and the inspector. Do not let your employer present their description of the situation without your input.

4. After the inspector's investigation is completed, the inspector must give a written decision as to whether the work is likely to endanger.

Sec. 43, Sub. 8 and 9

5. If the worker disagrees with the inspector's decision, an appeal can be filed within 30 days with the Ontario Labour Relations Board for a ruling.

Sec. 61

Can refused work be reassigned to another worker?

- Yes, during Stage 2 of the refusal. But the employer must advise this worker that the work has been refused and the reasons for the refusal. This must be done in the presence of a worker member of the joint committee, a health and safety representative or a worker selected by the union. This worker can also refuse, if he or she believes the job is unsafe.

Sec. 43, Sub.11

Does the worker have to be correct? What does "reason to believe" and "reasonable grounds to believe" mean?

- In order to legally refuse to work, the law requires only that a worker have a reasonable belief. A mountain of evidence is not needed.

Sec. 43, Sub. 3

Can a supervisor put off or refuse to investigate or send the worker home?

- No. The supervisor must investigate immediately in accordance with the procedure. If the supervisor refuses, workers should call a ministry inspector immediately and indicate what has taken place.

Sec. 43, Sub. 4

Do workers have a right to be paid during an investigation of a work refusal?

- Yes. The refusing worker and her representative are entitled to payment during all stages of a refusal.

Sec. 43, Sub. 13

- During the second stage of the refusal, the law allows the employer to give undefined "other directions" to the worker should no other work be available. Should this result in any loss of pay, benefits or layoff, the employer must prove that this was not a reprisal which is forbidden by the Act.

Sec. 43, Sub. 10(b); Sec. 50

Can a worker continue to refuse if the inspector rules that the work is not likely to endanger?

- The Act is silent on this question and thus full protection is not clearly provided. Generally, the worker returns to work and any dissatisfaction handled through the appeal process. The Ontario Labour Relations Board has ruled in a few cases that since this is not forbidden by the Act, a

worker would have the right to continue to refuse to work if the inspector's decision was not knowledgeably and independently based. These instances would be rare.

- Continuing a work refusal in this circumstance must be carefully considered. Workers are advised to consult their union staff representative on this issue.

Can an injured or susceptible worker refuse to perform unsafe work?

- Yes. The injured or susceptible worker has a right to refuse unsafe work under Section 43 (3) of OHSA. The right to refuse applies to a disabled or susceptible worker and not just the average healthy worker. The employer has a duty to make appropriate safety provisions that address your medical limitations. While the inspector will not rule specifically on whether an accommodation is appropriate, he/she will determine whether work is likely to endanger a disabled or susceptible worker. (See Part L: Case #6, #7)

NOTE: *It is important that injured workers obtain medical documentation in advance about their particular limitations or sensitivities to support these actions.*

PART E:

Your right to be free from reprisals

Can workers be penalized for seeking compliance with the law or exercising their rights under the Act?

- No. The law specifically prohibits employers from penalizing or intimidating workers for seeking compliance or exercising their rights, or for giving evidence with respect to the enforcement of the Act or during a coroner's inquest. This also includes the exercise of a worker's right to refuse unsafe work.

Sec. 50, Sub. 1

What can be done if an employer engages in a reprisal against a worker?

There are three possible options available to workers:

- Call the Ministry of Labour: Since this is a violation of the Act, the worker should immediately file a complaint with an inspector. Also, the inspector can issue orders to deal with the underlying health and safety violation that led to the reprisal. As of April 2012 an inspector, on consent of a worker, may refer an allegation of reprisal to the Ontario Labour Relations Board provided that the matter has not been dealt with by grievance arbitration under a Collective Agreement. An inspector may also (with approval from a Ministry of Labour manager)

investigate a reprisal for the limited purpose of determining whether to recommend a prosecution.

Sec. 50, Sub. 2.1

- File a grievance. The worker can also file a grievance in accordance with the procedures in a collective agreement. In this case, the worker still has the option to file a complaint with the OLRB so long as the grievance does not enter the arbitration process.

Sec. 50, Sub. 2

- Consider filing a complaint to the Ontario Labour Relations Board. The worker can file a complaint to the Ontario Labour Relations Board (OLRB). In this case the worker must file a special form with the registrar providing the complete details. *As of April 2012 (from the Bill 160 changes) an inspector, on consent of a worker, may refer an allegation of reprisal to the OLRB provided that the matter has not been dealt with by grievance arbitration under a collective agreement. Once this is filed, the OLRB will assign a labour relations officer who will meet with the parties, investigate and attempt a settlement. If no settlement is reached, the board will hold a hearing and rule on the complaint.

***NOTE:** unionized workers will have to elect either grievance arbitration or a decision from the OLRB, but may not have the issue dealt with in two forums.

PART F:

Your right to know

Do workers have a right to health and safety information?

- Yes. The employer is obligated to give workers information on the hazards of any chemical, biological and physical agent or any hazards associated with equipment or devices used in the workplace.

  Sec. 25, Sub. 2 (a)(d)

- Under the Workplace Hazardous Materials Information System (WHMIS) provisions of the Act the employer has to provide very specific information on chemical and biological agents by labeling containers, and providing material safety data sheets (MSDS) to workers.

  Sec. 37 to Sec. 42 and Regulation 860, as amended by Regulation 36/93

- The employer must advise workers of any health and safety reports (not harassment reports) in their possession and make these available on request.

  Sec. 25, Sub. 2 (m), Sec. 32.0.7, Sub (2)

- The employer must provide workers with information and instruction on the contents of the workplace harassment and violence policies and programs.

  Sec. 32.0.5, Sub. 2; Sec. 32.0.7

- The employer must provide information to a worker about a person in the workplace with a history of violent behaviour if the worker can be expected to encounter that person in the workplace and there is a risk to the worker of physical injury. The employer is not to disclose more personal information than is reasonably necessary.

Sec. 32.0.5, Sub. 3 (a)(b) and Sub. 4

What information do workers, health and safety representatives and JHSCs have a right to?

- A worker, a health and safety representative, a member of the JHSC and/or a union member can request an annual summary of information concerning workplace injuries and illnesses from the Workplace Safety and Insurance Board. The employer must post a copy of the information in the workplace where workers are likely to see it.

Sec. 12, Sub. 1 and 2

- When an employer does a risk assessment for the hazard of workplace violence, it must advise the JHSC or the health and safety representative, or workers if there is no JHSC or representative, of the results of the assessment. If the assessment is in writing, a written copy must be provided to the representative or the JHSC. If there is no representative or JHSC, workers must be given a copy or be advised how to obtain copies.

Sec. 32.0.3, Sub. 3 (a)(b)

- If a Ministry of Labour inspector gives written orders or a report in a workplace, the employer must post the orders or report in a place where workers are likely to see the report. A copy must be given to the health and safety representative of JHSC. Additionally, if it was a worker complaint that brought the inspector into the workplace, the inspector must give a copy to the complainant on request.

Sec. 57, Sub. 10

What information do health and safety representatives and JHSCs have a right to?

- The employer must provide health and safety representatives and JHSC members with information and assistance required to perform workplace inspections.

Sec. 8, Sub. 9; Sec. 9, Sub. 29

- Health and safety representatives and JHSC members have the right to obtain information from the employer about workplace hazards, to be consulted prior to testing for workplace hazards, and to be present at the beginning of testing.

Sec. 8, Sub. 11; Sec. 9, Sub. 18 (d)(e)(f)

- The employer must consult with health and safety representatives and JHSC members about industrial hygiene testing strategies and provide them with information about industrial hygiene testing strategies.

A health and safety representative or JHSC member has the right to be present at the beginning of testing.

Sec. 11, Sub. 1 to 4

- If a worker is killed or critically injured at work, the employer must immediately advise an MOL inspector the health and safety representative or JHSC and the union. Within 48 hours, the employer must send the MOL a written report according to the regulations.

Sec. 51, Sub. 1, Regulation 851, Sec. 5, Sub. 1

- If a worker is injured at work, including injuries from workplace violence, the employer must notify the JHSC or health and safety representative and the union in writing within four days. The written notice shall contain all the items listed in the regulations. If the employer is notified that a worker has developed an occupational illness or has made a claim to WSIB for an occupational illness, the employer must notify the MOL, the health and safety representative or JHSC and the union within four days.

Sec. 52, Sub. 1 and 2; Regulation 851, Sec. 5, Sub. 2

Do workers have a right to be trained in health and safety?

- Yes. The employer must train workers to work in a safe manner. Under WHMIS, the employer must ensure that workers are trained to have a working knowledge of the information provided on material safety data sheets (MSDS) and labels and how to handle any of these

hazardous materials in a safe manner as set out in Regulation 860, as amended by Regulation 36/93.

Sec. 25, Sub. 2(a)(d) and Sec. 42

- The Act also obliges the employer to carry out any training programs that might be required by a regulation.

Sec. 26, Sub. 1(l)

- The Act requires that at least one worker member of the joint committee receive certification training.

Sec. 9, Sub. 12

- An employer must provide information and instruction on workplace harassment and violence policies and programs.

Sec. 32.0.5, Sub. 2; Sec. 37.0.7

- Regulation 297/13 (introduced by Bill 160) requires employers to provide basic occupational health and safety awareness training to workers as soon as reasonably possible on the job and to supervisors within a week of working as a supervisor. The employer must maintain records of all training and provide written confirmation of the training to workers and supervisors

PART G:

Medical rights of workers

Do workers have a right to have their personal medical information kept confidential?

- Yes. Employers are prohibited from trying to get access to a worker's medical records without the worker's consent.

(See Part L: Case #13) Sec. 63, Sub. 2

- Members of joint committees and worker representatives are prohibited from revealing any personal medical information that comes into their possession.

Sec. 63, Sub. 1(f)

What rights do workers have regarding medical testing and monitoring?

- Workers are not required to undergo medical tests unless they consent.

Sec. 28, Sub. 3

- Workers consenting to undergo medical tests required by regulation must be provided with paid time off work as well as all costs of the medical examinations, including reasonable travel expenses.

Sec. 26, Sub. 3

PART H:

The power to stop unsafe work

What are the powers and rights of certified committee members when a dangerous circumstance is reported?

- A worker certified member has the right to investigate a complaint by a worker that danger exists in the workplace.

Sec. 48

- If both management and worker certified members agree that a danger exists, they may order that the work stop. This is known as a bilateral work stoppage.

Sec. 45, Sub. 4

When can the power to stop work be exercised?

- When both certified members agree that a dangerous circumstance exists.

Sec. 45

What is meant by a "dangerous circumstance?"

- A dangerous circumstance means that there has been a contravention of the Act or regulations which poses a danger, and any delay in controlling the danger may seriously endanger a worker.

Sec. 44

What is the procedure for a bilateral work stoppage?

1. The certified member requests that the supervisor investigate the dangerous circumstance.
2. The supervisor must investigate immediately in the presence of the certified member.
3. If the certified member is not satisfied with the supervisor's investigation, another certified member is called in to investigate.
4. If both certified members agree that a dangerous circumstance exists, they can order a work stoppage.
5. The employer must follow this order immediately.
6. If the certified members cannot agree, the work cannot be stopped, but an inspector can be called in to investigate.
7. Following the investigation, the inspector will issue a written decision to both certified members.
8. If a certified member does not agree, he or she can appeal to the Ontario Labour Relations Board within 30 days of the decision.

What can be done if the bilateral work stoppage provision is not working to protect workers, or if the employer has bad safety practices?

- A certified member or an inspector can apply to the OLRB for a declaration or recommendation. The OLRB can order that the certified worker member be given the unilateral power to direct a work stoppage, or

recommend that the government assign an inspector to the workplace on a full time or part time basis at the employer's expense.

Sec. 46, Sub. 1 to 8

  - In considering an application for a declaration the OLRB must to so in accord with the criteria set out in Regulation 243/95. This would include consideration of the employer's safety record (i.e. complaints, convictions, inspection records, etc), injury and illness records, safety policies and practices, pattern of bad faith with the joint committee, etc.

- In addition to having this ordered by the OLRB, unions can negotiate a unilateral stop work provision with the employer. Should the employer agree to such a provision, a worker certified member will have this power when the employer so advises the joint committee.

Sec. 47, Sub. 1(b)

What is the procedure for unilateral work stoppage direction?

- If the OLRB has issued a declaration that a certified worker can unilaterally stop work, or if the employer has adopted a unilateral work stoppage process, the following steps are followed.

- Should a certified member find a dangerous circumstance he or she can order the employer to stop the work operation in question.

Sec. 47, Sub. 2

- The employer must immediately comply, and immediately investigate.
- After investigating and taking corrective action, the employer may ask the certified member to cancel the order.
- If the employer and certified member cannot agree, then an inspector can be called in to investigate.
- Following the investigation, the inspector will issue a written decision which may include a cancellation of the stop work order.

Are certified members subject to any liability under this provision?

- Yes. Anyone can file a complaint with the OLRB within 30 days alleging that a certified member exercised or failed to exercise this power recklessly or in bad faith. The OLRB can take whatever action it considers appropriate, including decertifying the certified member.

Sec. 49

Are there any restrictions on the power to order either a bilateral or unilateral work stoppage?

- Police, fire fighters and persons employed in correctional facilities are prohibited from exercising this power under any circumstances.

Sec. 44, Sub. 2(a)

- Workers employed in health care facilities are prohibited from using it in circumstances that would directly endanger another person.

Sec. 44, Sub. 2(b)

Are workers paid during a work stoppage order by certified members?

- There is no guarantee that workers affected by a safety shutdown will be paid.

PART I:

Appeals and complaints

What can be done if you disagree with an inspector's decision or order?

- Anyone who disagrees with an inspector's decision or order can file an appeal with the Ontario Labour Relations Board within 30 days of the decision. The Board may affirm or rescind an inspector's orders, or substitute its findings. And the Board's decision is final.

Sec. 61

How are appeals dealt with by the OLRB?

- The board requires that you file your appeal in writing on Form A-65 within 30 calendar days of the inspector's decision. All of the OLRB forms and Information Bulletins are available on the provincial government website. Look for the OLRB link on the Ministry of Labour's site.
- The board will then send a copy of the completed Appeal Form (A-65) and a blank Response to Appeal Form (A-66) to all the responding parties to the appeal. The parties to the appeal usually include the worker, the union, the employer and the inspector.

- The board will appoint a labour relations officer (LRO) to meet with the parties in an effort to resolve the appeal.

Sec. 61, Sub .3

- The LRO will report the results of this effort to the board. If the matter is not resolved, the case will be set for a consultation or hearing, and a Notice of Consultation or Hearing will be sent to all of the parties.
- The Response to Appeal (Form A-66) must be completed and delivered to the Board and all of the parties no later than 21 calendar days before the consultation or hearing date.

How are requests for a suspension of an inspector's decision processed by the OLRB?

- Suspension requests will be processed only if an application for appeal has also been filed with the board.
- An application for suspension of an inspector's decision is filed with the Board on Form A-67. In giving your reasons for a suspension request, applicants must address the following criteria that were originally set out in the Zehr Market case (*See Part L, Case #20)*:
    - Will the health and safety of the workers be assured if the order is suspended?
    - Will there be any negative impact on the applicant if the decision is not suspended?

    - Is there a good chance of succeeding in your appeal?
    - Is there a good reason to vary the inspector's decision or order before the appeal can be dealt with?
    - And any other information that might be supportive.
- A completed Form A-68 must be delivered to all parties within 14 calendar days of confirmation of filing sent by the board.
- Applications for suspension are usually dealt with through consideration of written submissions only. In certain instances, the Board may call for an oral hearing or consultation.

What options can the OLRB take in appeal/suspension applications?

- Hold formal hearings;
- Limit the presentation of evidence by the parties;
- Issue a decision without holding a hearing after consulting with the parties;
- Suspend the inspector's order pending the disposition of the appeal;
- Reconsider any decision or order an inspector has made.

How are Section 50 reprisal complaints processed by the OLRB?

- Applications alleging that an employer has violated Section 50 must be made on Form A-53. The applicant must fully describe how Section 50 was violated and provide facts and documents in support of the allegations that the employer imposed an unlawful reprisal on a worker.
- Before filing the application with the board, the worker must deliver an Application Package to the employer. This consists of the completed application, a blank response Form A-54, a Notice of Application Form C-26, and a copy of the Board's Information Bulletin.
- No later than five days after delivering the Application Package to the employer, the worker must file two copies of the application with the board. The matter will be terminated if the application is not filed within five days of delivery to the employer.
- After receiving the Application Package, the employer has 10 working days to respond to the application on Form A-54. The employer must first deliver a copy of the response to the worker and then file 2 copies to the Board.
- After the response has been filed, the board will assign an LRO who will attempt to mediate a settlement.
- If no settlement is reached, a hearing will be held. At the hearing, the employer must establish that it did not impose an unlawful reprisal. Usually, the employer must give its evidence first.

What is the role of the OLRB under the Act?

The Act empowers the Board to hear and decide:

- Appeals of inspectors' orders and decisions.

Sec. 61

- Complaints from certified members or an inspector that the bilateral work stoppage provision does not protect the workers from serious risk to their health and safety.

Sec. 46

- Complaints that a certified member has exercised or failed to exercise the power to stop work recklessly or in bad faith.

Sec. 49

- Complaints that an employer has taken a reprisal against a worker. These are filed on Form A-53 with the OLRB.

Sec. 50

How can an application to the board under Section 46 assist workers?

- An application places the employer under the close scrutiny of the OLRB.
- The employer is faced with the possibility of having the unilateral shutdown provision imposed or having an inspector assigned on a full-time or part-time basis.

What must you carefully document to build a case against a bad employer?

- obstruction of the internal responsibility system;
- cases where the employer ignores the recommendations of the joint committee;
- cases where the employer fails to correct identified safety violations;
- the number of orders, repeat orders or charges;
- the incidence of occupational illness and injury;
- lack of policies, programs, safety procedures and training;
- the number of health and safety reprisals.

(See Regulation 243/95)

PART J:

Legal enforcement

Who can call an inspector?

- Anyone can call an inspector.

Sec. 43, Sub. 6

Do workers have a right to accompany an inspector?

- Yes. The Act requires that a designated worker (a worker JHSC member, or another worker chosen by the union because of knowledge and training) accompany an inspector during a routine inspection.

Sec. 54, Sub. 3

- In addition, worker representatives are required to be present during an inspector's investigation of a work refusal.

Sec. 43, Sub.7

What are the powers of Ministry of Labour inspectors?

Inspectors have the power to:

- Enter any workplace at any time without a warrant.

Sec. 54, Sub. 1(a)

- Must investigate all work refusals and give a written decision.

Sec. 43, Sub. 7, 8

- Be accompanied by a person with specialized knowledge during an inspection.

Sec. 54, Sub. 1(g)

- Request any drawings, documents, records, etc, and take these away to copy.

Sec. 54, Sub. 1(c)

- Determine compliance with orders.

Sec. 59, Sub. 4

- Order tests by qualified persons at the employer's expense.

Sec. 54, Sub. 1(f)(k)

- As of September 2016 and the Bill 132 changes, order an employer to cause an investigation of workplace harassment to be conducted by a third-party person. The inspector can also specify the knowledge, experience or qualifications of the person. Also that a written report be provided by that person at the expense of the employer. (The report is not a report a type of report that must be shared with the JHSC).

Sec. 55, Sub. 3(1)(2)

- Order that equipment not be used until it is tested.

Sec. 54, Sub. 1(l)

- Alter the frequency of inspections by worker members or health and safety representatives.

Sec. 55

- Examine and copy training materials and attend training programs provided by the employer.

Sec. 54, Sub. 1(p)

- Seize documents or objects as evidence of a contravention.

Sec. 56

- Require a compliance plan.

Sec. 57, Sub. 4 and 5

- Order that work not resume under a stop work order until the operation is re-inspected and the stop work order is withdrawn.

Sec. 57, Sub. 8

What can an inspector do if unsafe or unhealthy conditions are found?

- The inspector can issue orders to comply, issue stop work orders and/or initiate a prosecution.

Who has the power to determine compliance with an order?

- Compliance with an order can only be determined by an inspector.

Sec. 59, Sub. 4

- Work placed under a stop work order cannot resume until an inspector re-inspects, unless the worker member or a health and safety representative advises the inspector that he or she agrees with the employer's notice of compliance.

Sec. 57, Sub. 7

- The employer's notice of compliance with an order must be accompanied by a statement of agreement or disagreement signed by the committee member or the health and safety representative.

Sec. 59

How should workers deal with work orders, stop work orders and compliance notices?

- According to Ministry of Labour policy, the inspector can accept that compliance has been met without re-inspection, if the worker representative agrees with the employer's notice of compliance. If the worker disagrees, then an inspector will re-inspect. If the worker declines to sign the employer's notice, then the inspector might re-inspect.

Worker representatives are well advised to take the following measures:

- Insist that inspectors issue an order for a compliance plan. This gives you an opportunity to review how the employer will correct the hazard, and a means of monitoring the progress.
- It is absolutely essential that worker representatives carefully assess an employer's notice of compliance. In most cases, it would be wise to insist on a re-inspection by the inspector before endorsing the notice of compliance.

What can be done if an inspector's order or decision does not address the hazard or violation of the Act?

- The worker can file an appeal with the OLRB within 30 calendar days of the inspector's decision.

Sec. 61

What can happen if someone violates the Act and its regulations, or fails to comply with an order?

- Anyone can be charged and prosecuted for these violations. If found guilty, they are subject to a fine of up to $25,000 or one year in prison or both.

Sec. 66, Sub. 1

- If found guilty, a corporation can be fined up to $500,000.

  Sec. 66, Sub. 2

- The Attorney General can require that a case be tried by a provincial judge instead of a justice of the peace.

  Sec. 68, Sub. 2

What can be done if the government refuses to prosecute an employer for violating the Act?

- In addition to putting public pressure on the government, an individual or a union can bring a private prosecution by filing information with a justice of the peace indicating that there is evidence that an employer violated the law.

  Unless the government decides to assume the prosecution, the individual or the union is responsible for conducting the prosecution and paying the legal bills.

PART K:

Government regulatory power

What are the regulations?

- Section 70 of the Act empowers the cabinet to make regulations pursuant to the Act. These are the detailed rules applying to specific circumstances. These cannot, however, go beyond the powers of the Act or contradict the provisions of the Act.
- Any time you see the word "prescribed," it means that a regulation could set specific safety requirements.

Can the government make regulations which affect workers' or unions' rights?

- Yes. The Act gives the government the power to make regulations such as the following (see OHSA Sec. 70 for a complete list):
    - Require more than four persons on a joint committee at certain workplaces.

      Sec. 70, Sub. 10

    - Exempt any workplace from the requirement to have a committee. The right to a committee can be taken away without review by the legislature.

      Sec. 70, Sub. 11

- Set the requirements for the terms, qualifications and eligibility for membership on joint committees. The union's right to select its representatives on its own terms can be restricted.

  Sec. 70, Sub. 13

- Exempt any workplace from the requirement to have certified members. This restricts our right to training and takes away what little protective powers workers do have. (Note: Regulation 385/96 exempts employers from having to certify members of joint health and safety committees formed because a designated substance regulation applies to the workplace pursuant to *Sec. 9 Sub 2.c*

  Sec. 70, Sub. 14

- Exempt workplaces from the bilateral or unilateral right to shut down unsafe work.

  Sec. 70, Sub. 49

- Exempt any workplace from the requirements to provide health and safety representatives with training to enable them to effectively exercise the power and perform the duties of a health and safety representative. **Note:** the requirement to train HSRs is not yet the law so it is unknown if there will be exemptions to it.

  Sec. 70, Sub. 13

What can be done to protect our rights in this case?

- Given the power that government has to take away powers and rights of workers and unions, it is important that unions and central labour bodies be extremely vigilant and demand effective participation in the regulatory process.

Are there regulations that apply to toxic substances?

- Yes. Section 70 (23) gives the government power to designate substances for specific controls. For example, there are several substances that are designated in regulation such as asbestos, lead, and mercury. Eleven substances are covered by Regulation 490/09, the Designated Substance regulation that requires exposure assessments, control programs, exposure limits and medical monitoring. This regulation primarily applies in places that use, manufacture, or regularly handle the substance. There is also Regulation 833 which establishes the limits of concentrations of over 400 chemical and biological substances in the workplace atmosphere by setting occupational exposure limits (OEL). Regulation 833 does not require routine assessments and control programs unless ordered by an inspector.

My workplace has asbestos. What regulation applies for asbestos management or abatement?

- Regulation 278/05 Asbestos on Construction Projects and in Buildings and Building Repair Operations applies to buildings that contain asbestos

but that do not use or manufacture the substance. This regulation prescribes obligations for employers and owners in buildings where asbestos is present, or being managed or removed.

PART L:

Health and safety case law

You will notice that most of the cases below were decided in the 1990s or before by the Office of the Adjudicator, a specialized body which previously heard and determined health and safety appeals. Since 1996, health and safety appeals have been dealt with by the Ontario Labour Relations Board. Since the appeal function was transferred to the OLRB, over 90 per cent of all cases (OPSEU and broader) are settled through mediation, rather than decided at a hearing. Although the cases below are quite old, they continue to be useful to clarify how different sections of the OHSA have been interpreted.

Staffing Levels

Case #1

Decision: The adjudicator overruled an inspector and ordered additional staffing and regular relief for a worker assigned to monitor a violent resident on a one-to-one basis. This was the first time an adjudicator addressed staffing issues in a decision.

Place: Adult Occupational Centre at Edgar

Findings: The adjudicator found that the employer failed to take reasonable precautions for the protection of the worker who was assigned to work alone with a violent person. The adjudicator also found that an inspector had the power to require disclosure of the psychiatric

assessment of the resident in order for the inspector to assess the extent of hazard.

(Decision No. 92-09)

Case #2

Decision: The adjudicator supported the inspector's decision to order safe staffing levels.

Place: St. Thomas Psychiatric Hospital

Findings: The adjudicator found that an inspector and an adjudicator could consider staffing as a reasonable precaution an employer would be required to take to protect the health and safety of workers under Section 25(2)(h) of the Act.

(Decision No. 01/93-A)

Case #3

Decision: The adjudicator overruled the inspector and ruled that correctional officers had the right to refuse when staffing levels fell below a minimum. The adjudicator overruled the inspector's determination that these conditions did not endanger workers.

Place: Sault Ste. Marie Jail

Findings: The adjudicator found that the employer's decision to run regular activities at below minimum staffing levels violated Section 25(2)(h). He also ruled under Section 43 that this condition was likely to endanger the workers.

The adjudicator held that the correctional officers were entitled to refuse since reduced staffing levels were not a normal condition of employment or inherent in their work.

(Decision No. OHS 95-25A)

Case #4

Decision: The adjudicator ruled that the employer was required to have two correctional officers in the control module. The adjudicator held that a correctional officer in a maximum-security detention centre was entitled to an independent "back up" officer to monitor his or her safety.

Place: Sault Ste. Marie Jail

Findings: When the employer first cut staff in the control module, an inspector had written orders. The inspector subsequently ruled that the employer had complied with the orders when the employer modified the control module to accommodate a one-person operation.

The adjudicator found that the employer had not complied with the order since there were too many distractions that diverted a single officer's attention from observing the monitors.

(Decision No. OHS 97-02)

Case #5

Decision: The adjudicator ruled that a correctional officer must have an independent observer to monitor his or her

safety when escorting inmates on the down ramp at the Hamilton-Wentworth Detention Centre.

(Decision No. OHS 98-03)

The rights of disabled or susceptible workers

Does the employer have an obligation to protect susceptible workers?

Do susceptible workers have the right to refuse?

Case #6

Decision: The adjudicator found that a disabled correctional officer did have the right to refuse work he believed was unsafe, because performing work that medical advice says is unsafe is neither inherent nor a normal condition of employment. The Adjudicator also ruled that the employer could not require the worker to perform work a doctor said was unsafe.

Place: Metro West Detention Centre

Findings: The adjudicator overruled an inspector's determination that a disabled correctional officer did not have the right to refuse an assignment that a doctor said would be unsafe. The adjudicator found that while an inspector might not have the jurisdiction to order an employer to accommodate a disabled worker, the inspector does have clear jurisdiction under Section 25(2)(h) to forbid an employer from requiring a worker to perform work a doctor says is unsafe.

(Decision No. OHS 14-97)

Case #7

Decision: The adjudicator supported an inspector's order that an employer provide an ergonomically designed chair for a disabled worker who had suffered a back injury.

Place: Elgin-Middlesex Detention Centre

Findings: The adjudicator dismissed the employer's argument that the employer was only obliged under Section 25(2)(h) to provide protection for the average healthy worker. The adjudicator ruled that the employer had a duty to ensure that the health and safety of a disabled or susceptible worker was protected. The adjudicator also dismissed the employer's argument that the right to refuse under Section 43(3) was only available to the average healthy worker, and could not be invoked by a susceptible worker who had reason to believe that the conditions of work were likely to endanger him.

(Decision No. OHS 95-30)

The Right to Refuse

How must the restriction on the right to refuse be determined?

Case #8

Decision: The adjudicator ruled that the hospital employer must provide evidence that hazards are "inherent in the work or a normal condition of employment" when alleging that the right to refuse does not apply.

Place: Mohawk Hospital

Findings: The adjudicator overruled the inspector's decision that hospital workers did not have the right to refuse just because they worked at a hospital. The employer must bear the burden of proof when seeking to take away the worker's right to refuse, and the inspector is obliged to consider the evidence prior to rendering a decision.

(Decision No. OHS 17-93)

Case #9

Decision: The adjudicator ruled that in deciding whether or not a correctional officer had the right to refuse under Section 43(3), the inspector had a duty under Section 7 of the Charter of Rights and Freedoms to make a determination in a manner consistent with the principles of fundamental justice. The adjudicator ruled that the inspector was required under Section 43(7) to come to the workplace in order to determine whether the refusing worker was entitled to refuse.

Place: Toronto Jail

Findings: The adjudicator overruled an inspector's "over-the-telephone" determination that a correctional officer did not have the right to refuse over the employer's failure to conduct a search for weapons at the Toronto Jail. The adjudicator held that a decision to restrict the rights of a correctional officer based on a telephone interview was not in accord with the principles of fundamental justice under Section 7 of the Charter of Rights and Freedoms.

The adjudicator also held that once a work refusal is initiated, it remains a work refusal until an inspector conducts an investigation at the workplace and determines that the worker does not have the right to refuse under Section 43. The adjudicator also ruled that the worker did have the right to refuse because incomplete searches for weapons were not an inherent or a normal condition of employment, and were also likely to endanger the worker.

(Decision No. OHS 97-15)

What is a "normal condition of employment"?

Case #10

Decision: The adjudicator ruled that workers who do not have the right to refuse under Section 43 are entitled to have their health and safety concerns dealt with promptly by an inspector because of the limitations on the right to refuse.

Place: Maplehurst Correctional Centre

Findings: In this decision, the adjudicator set out a "test" for "normal conditions of employment" to mean an established and prevailing practice at the institution. The adjudicator held that the inspector has a responsibility to assess whether the established and prevailing practice provides adequate protection for the worker when the worker expresses his or her concerns about their adequacy. At the same time, assignments that deviate from established and prevailing safe practice cannot be considered normal or

inherent in the work and would, therefore, allow the worker to invoke the right to refuse.

(Decision No. OHS 94-21)

Can an employer assign a refusing worker alternative work during the employer's investigation?

Case #11

Decision: An Appeal Director ruled that alternative work may not be assigned during the first stage of a work refusal. The employer cannot assign the refusing worker alternative work until the employer's investigation is completed in the presence of the worker and his or her representative, and an inspector has been notified of a continuance of the work refusal.

Place: Accuride /Hutt (May 12, 1989)

Criteria for Unilateral Right to Stop Work

Case #12

Decision: The adjudicator found that in determining whether the unilateral right to stop work should be granted to a certified member, the adjudicator must primarily consider whether the employer has demonstrated a failure to protect the health and safety of workers. In addition, he must consider past success or failure of the bilateral stop work procedure to protect workers from "serious risk" to their health and safety. Such evidence would include consideration of the employer's health and safety record,

and health and safety climate at the workplace as set out in Regulation 243/95.

(Decision No. OHS 95-39)

Confidentiality of medical information

Case #13

Decision: The adjudicator ruled that it was a violation of Section 63(2) of the OHSA for an employer to contact a worker's doctor about the worker's physical limitations without the worker's written consent.

Place: Niagara Detention Centre

Findings: The adjudicator also held that the Workers' Compensation Act (now Workplace Safety and Insurance Act) did not require the employer to obtain this information in order to comply with its obligation to return the refusing worker to suitable modified work, and therefore could not be used as a defense for violating Section 63(2).

(Decision No. OHS 95-24A)

Maintain a Safe Distance from Inmates

Case #14

Decision: The adjudicator ruled that a correctional officer did have the right to refuse to light an inmate's cigarette using matches. The adjudicator ordered the employer to

develop a procedure that would allow officers to maintain a safe distance from inmates.

Place: Niagara Detention Centre

Findings: The adjudicator held that the worker was entitled to refuse because using matches to light an inmate's cigarette is not an inherent part of the work nor a normal condition of employment. The adjudicator also found that the situation was likely to endanger the worker, and that the employer was in violation of Section 25(2)(h) by requiring the officer to bring his hands too close to the hatch door when using matches to light a cigarette.

(Decision No. OHS 97-13)

Self-defence training for non-correctional officers

Case #15

Decision: The adjudicator overruled a Ministry of Labour decision to suspend an inspector's order for the employer to provide self-defense training to its non-correctional officer staff who were required to supervise inmates. The adjudicator reinstated the order for training.

Place: Guelph Correctional Centre

(Decision No. OHS 94-44A)

Correctional officers escorting inmates

Case #16

Decision: The adjudicator found that the Ministry of Correctional Services failed to provide sufficient protection to correctional officers assigned to escort inmates in the community. The decision overturns a number of inspectors' decisions on work refusals and complaints by correctional officers at several institutions over inadequate protection during community escorts.

The adjudicator issued orders that require:

1. No less than two officers during escorts;
2. Upgraded kevlar vests to prevent knife penetration;
3. ASP expandable batons;
4. Pepper spray;
5. Training in the use of new equipment, and the avoidance of surprise attacks;
6. Inmates must be place in full restraints;
7. Provision of special "black box" handcuff devices;
8. Direct contact with police;
9. Revisions to "hostile situation" policy;
10. Restrict visits to family and legal counsel only;
11. Vehicles must meet Ministry standardized security specifications;
12. Distinct uniforms for correctional officers;

13. Fluorescent orange coveralls for inmates on escort;
14. Access to CPIC information on inmate being escorted.

(Decision No. OHS 98-05)

Competency of supervisors

Case #17

Decision: The adjudicator found that the employer had failed to ensure that its supervisors were competent as defined by Section 25 (2) of the OHSA.

Place: Whitby Jail

Findings: This decision established that the standard for assessing competency of supervisors must be judged by objective criteria. The adjudicator listed the areas that a manager at a correctional facility must be trained in to establish competency. This list included knowledge of the Act and its regulations as well as established safe operating measures and procedures, all contingency plans, standing orders, the functioning of a joint health and safety committee, and the employer's and supervisor's duties under the OHSA.

(Decision Nos. 1926-97-HS, 1927-97-HS)

Other relevant decisions

Inspector must address a workplace illness

Case #18

Decision: The adjudicator ruled that the employer was in violation of Section 25 (2) (h) by continuing to expose workers to "sticky foam," an unintended by-product in the production of foam insulation.

Place: Johnson Controls

Findings: The adjudicator concluded that the conditions of the workplace experienced by the refusing workers were likely to endanger them. The adjudicator held that in determining the likelihood of endangerment, it is not essential to require a precise determination of what agent produced by the work process is causing illness among the workers. In the Adjudicator's view the notion of danger in Sec. 43 is broad enough to address adverse health effects experienced by workers even where the immediate cause is not yet known.

(Decision No. OHS 94-32)

Does the right to refuse apply to "hypothetical" hazards?

Case #19

Decision: The adjudicator overruled the inspector and ruled that a work refusal could be based on conditions that might endanger the worker in the future. In these cases, one

would have to show a probability that the danger could arise.

Place: Kut-Kwick Mower

Findings: The worker could exercise the right to refuse because he had reason to believe that he was likely to be endangered by a hazard which was likely to develop rather than being immediately present.

(Decision No. OHS 85-22)

What factors must be addressed when applying for a suspension of an inspector's order?

Case #20

Decision: The adjudicator laid out the factors to be considered by an adjudicator when deciding a request to suspend an inspector's order or decision pending the disposition of an appeal. These include: 1) adverse impact on workers' health and safety; 2) prejudice to the employer's operation and undue hardship; and 3) strong prima facie case for winning the appeal.

Place: Zehrs Markets Ltd./Ellis

(Decision No. OHS 4-91)

More than one union or the existence of non-bargaining unit workers in a workplace

Case #21

Decision: The board found that a newly certified union (CUOE) was entitled to participate in the selection of worker representatives to the JHSC. In the case, 47 workers existed at the workplace, 27 historically unionized with LIUNA, 15 newly organized with CUOE, and five which were non-bargaining unit. Prior to CUOE's certification, LIUNA chose both worker members of the JHSC. Upon the certification of CUOE, LIUNA was found to now be obligated to participate with CUOE to select the worker members of the JHSC. The decision made no findings about the five non-unionized workers; however the board agreed that prior to the certification of CUOE that LIUNA was entitled to select the worker members of the JHSC.

Place: Canadian Union of Operating Engineers and General Workers v. York Condominium Corp. No. 76 (Health Committee Grievance), [2000]
O.L.A.A. No. 46(QL).

Case #22

Decision: The board ruled that the OHSA required the engagement of both unions in the decision to select worker representatives to the JHSC. In the case, 63 workers were OPSEU members, compared to 13 AMAPCEO members. The board disagreed that OPSEU could choose both representatives, and also disagreed that representation should necessarily be proportional. Nor is each union necessarily entitled to a member on the JHSC. Rather, the unions should collaborate to select representatives on the JHSC.

Place: Ontario Public Service Employees Union v. Ontario (Ministry of Community and Social Services), [2005] OLRB Rep. Jan./Feb. 121.

Case #23

Decision: The divisional court found that where multiple unions exist within a workplace, that the unions are under a legal obligation to consult with each other and agree upon representatives to the JHSC.

Place: Elementary Teachers' Federation of Ontario v. Ontario (Ministry of Labour), [2007] O.J. No. 3229.

What is regularly employed?

Case #24

Decision: The Ontario Court of Appeal ruled that independent operators at a trucking company counted as regularly employed in order to be counted pursuant to Sec. 9, Sub. 2(c) of the OHSA to decide whether a workplace should have a joint health and safety committee. In the case, United Independent Operators Limited (UIOL) is a load broker that trucks goods. Its office had 11 workers (dispatchers and office staff) and contained a lunch room and seven offices within a building that acted as the central base of the trucking operation. Between 30-140 truck drivers moved loads, and called the office each day for dispatch and assignment of their loads and destinations.

The truckers attended the office twice a month to pick up cheques and submit paperwork. The appeal court judge set out the dictionary meaning of "regular" as "acting, done, recurring, usual, and occurring at fixed or pre-arranged intervals." It was normal or customary for UIOL to have between 30 and 140 truck drivers working for it. Thus, on the dictionary meaning of "regular", UIOL regularly employed truck drivers. In para. 63, "The OHSA is a remedial public welfare statue whose purpose is to guarantee a minimum level of health and safety protection for workers in Ontario. This broad purpose must inform the interpretation of Sec. 9 Sub.(2) (a) which requires the establishment of a JHSC, an important mechanism in achieving the legislative objective of enhanced worker safety."

Place: Ontario (Labour) v. United Independent Operators Limited, 2011 ONCA 33 Date: 20110118 DOCKET C51442

Case #25

Decision: This case provides a good discussion about what "regularly employed" means. For example, regularly employed is not only those present at the workplace at any one time, it also includes other employees—full-time, part-time, and temporary—who are also employed at the workplace but not present simultaneously. Temps count if they have a pattern of availability and a pattern of usage, even if their pattern and usage is irregular in nature.

Place: Brewers Retail Inc. and Ministry of Labour, and United Food and Commercial Workers (UFCW) Local 2782 [1995] O.O.H.S.A.D. No. 20 Decision No. OHS 95-20 File No. AP. 94-117 (by Dana Randall)

Part M:
OPSEU health and safety policies

OPSEU Policy on Health and Safety Committees

1. Each local union must form a standing union health and safety committee (committees) that is responsible and accountable to the local executive committee (LEC).
2. Each committee shall be composed of an appropriate number of members who are appointed by the LEC as health and safety committee persons.
3. All health and safety committee persons shall serve on the committee for a term of office determined by the LEC, and shall serve at the pleasure of the LEC.
4. All health and safety committee persons must have completed at least one (1) weekend health and safety school, and by the end of their first term in office must have completed a 30-hour health and safety program.
5. Health and safety committee persons shall focus on health and safety matters including participation as union representatives on joint (union-management) health and safety committees.
6. The union health and safety committee shall be responsible for the following:

(a) investigating members' complaints and assisting in obtaining a remedy.

(b) inspecting the workplace as per the provision of the legislation or collective agreement.

(c) conducting or arranging health and safety training for local members.

(d) regularly informing members about health and safety hazards and their rights under the legislation and their collective agreement.

(e) representing members during Ministry of Labour inspection tours, work refusals and health and safety hearings.

(f) calling in the Ministry of Labour inspectorate when concerns are raised by individual members.

7. Union representation of joint (union-management) health and safety committees shall consist of at least one (1) member of the LEC, and an appropriate number of health and safety committee persons appointed by the LEC from the union health and safety committee.

8. Union representatives on joint committees shall be solely accountable to the LEC and the membership at all regularly scheduled meetings.

9. The union health and safety committee shall meet as required and report to the LEC and the membership at all regularly scheduled meetings.

10. Each health and safety committee person shall be provided with a wallet-size certificate and lapel pin with a health and safety designation recognizing their status within the local union.

OPSEU policy on selection of certified members and trainers

In order to ensure that certified members on joint committees remain accountable and responsible to the local union and the members they represent the following policy has been developed by the OPSEU's Board of Directors. It is based on the principle that the local union is the basic building block of our union, and that it is the elected officials of the local union that have been empowered to represent the interest of its members:

1. Certified members on the joint health and safety committee must be appointed by the local union executive and are directly responsible and accountable to the local executive and serve at the discretion of the local executive.
2. All certified members are required to undergo political orientation by completing OPSEU's course on health and safety.
3. Certified members will be appointed for a set term of office determined by the local executive. However, the local executive may remove any certified member who has not satisfactorily represented the health and safety interest of the members.
4. Worker certification instructors must be selected by the union and undergo union orientation in health and safety by completing OPSEU's course on health and safety.

It is important that the OPSEU representatives on JHSCs are linked effectively with their local union and that they see themselves as advocates for their members and a key part of the union. While employers promote the popular myth that health and safety is non-adversarial and based on partnership, in reality workers and unions have little say in health and safety decision-making unless they fight for their rights. The employer objective is to disarm our representatives by viewing them as safety technicians who are not first and foremost local union officials who are representative and accountable to their members.

Part N:

OPSEU health and safety publications and resources

Publications

Violence at Work (revised 2017)

An Injured Worker's Right to Return to Work Safely (1999)

Safe Work, Healthy Work: A Guide for Home Care Workers (1999)

Office Ergonomics Workbook: published by Occupational Health Clinics for Ontario Workers; available on OPSEU Health and Safety web site

OPSEU health and safety courses

Health and Safety Level 1

This course is designed for members and stewards who want to become more involved in health and safety activities in their workplace. There is a strong focus on health and safety in legislation to enable participants to use the legislation effectively in their own workplaces. Participants work in groups to explore the legislation and to gain a better understanding of their rights and employers' obligations under the Occupational Health and Safety Act and its regulations. Participants are introduced to the concepts of hazard identification, assessment and control and develop a greater understanding of the components of an effective health and safety system.

Health and Safety Level 2

This course is designed for Health and Safety committee members and union activists with a strong interest in Health and Safety. Participants learn how to be more effective members of their JHSC's as they work in small groups learning how to better identify, categorize, and control hazards. Using case studies and examples from their own workplaces, participants learn how to improve workplace inspections, and how to begin accident and illness investigations. The course offers the opportunity to prioritize and strategize around health and safety problems and to address problems specific to participants' own workplaces. The course builds on the material in OPSEU's Level 1 course and assumes that participants have a basic knowledge of the Occupational Health and Safety Act.

Health and Safety Level 3

This course builds on concepts covered in OPSEU Health and Safety Level 1 and 2. OPSEU Health and Safety Level 3 is designed to help union activists, worker joint health and safety committee members, health and safety representatives, and workers to address complex hazards using their local health and safety systems and external resources. Drawing from their own experiences, participants will strategize effective approaches to complex hazards, such as investigating concerns about potential occupational cancers and ergonomic hazards. Participants will also learn basic approaches to investigating indoor air quality complaints. They will discuss the precautionary principle and the ALARA principle and understand the centrality of these two concepts in health and safety activism. Participants will develop strategies to address ergonomic hazards, develop recommendations and practice facing the employer to propose their recommendations, enhancing their organization skills and

confidence to represent members in their efforts to achieve safer and healthier workplaces.

****NEW in 2017** Taking action on workplace stress**

This course will develop the capacity of workers to take action on workplace stress using a health and safety framework and union tools. The course will help participants identify workplace factors that negatively affect workers' health and wellbeing and gain familiarity with terminology associated with workplace stress. Participants will share stories from their workplaces and strategize how to resolve some of the issues using the tools provided.

OPSEU Education is offered through regional education sessions. Check the OPSEU website or talk to your Local President for information.

Other important resources and collaborative projects:

Mental injury tools for Ontario workers (MIT toolkit)

Available on the Occupational Health Clinics for Ontario Workers (OHCOW) website at www.ohcow.on.ca

The Mental Injury Toolkit is a resource book (and three short videos) for activists who want to take action on workplace stress in their workplace. The kit walks you through all you need to know about workplace stress.

- PART 1—Why should we care?
- PART 2—Workplace Stress: Assumptions, terminology, and approaches
- PART 3—What are other jurisdictions doing?
- PART 4—What are my legal rights and protections? (focus on Ontario)
- PART 5—What does a workplace action plan look like?
- PART 6—Resources

Public Services Health and Safety Association (PSHSA)'s Violence, Aggression & Responsive Behaviour (VARB) Tools

OPSEU and other unions worked in collaboration with PSHSA and other stakeholders to develop five toolkits for workplace violence prevention in healthcare. These kits help workplaces respond to mandatory provisions in the OHSA regarding summoning immediate assistance, providing information about a person with a history of violence and risk assessment.

The VARB toolkits are:

- Organizational Risk Assessment
- Individual Client Risk Assessment
- Flagging
- Security
- Personal Safety Response System.

For further information on health and safety matters, contact your staff representative or OPSEU health and safety officers at OPSEU head office.


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