

Re-Open Ontario Consultation

Communicating Worker Rights and Employer Responsibilities

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We read with great interest the first documents outlining Ontario's Health and Safety Protocols for reopening in the context of COVID-19. In addition to the work that has been done it is important to more explicitly highlight and provide clarity on worker rights and employer responsibilities during this time.

Health and Safety regulations and enforcement will be under increased pressure and scrutiny as the province prepares to return to work under new conditions. The province must ensure clear communication of the rights and responsibilities of all involved in order to achieve the smoothest possible re-opening. To that end, we provide the following insights.

Ontario's Occupational Health and Safety Act

The *Occupational Health and Safety Act* provides the legal framework and the tools to achieve compliance. It sets out the rights and duties of all parties in the workplace. It establishes procedures for dealing with workplace hazards, and it provides for enforcement of the law where compliance has not been achieved voluntarily.

Employers should note that the Act makes it clear that the employers have the greatest responsibilities with respect to health and safety in the workplace. However all workplace parties have a role to play to ensure that health and safety requirements are met in the workplace.

Worker Rights

Across Canada, there are laws in place to protect workers on the job. This Occupational Health and Safety legislation outlines three important rights to all workers to ensure they have the knowledge they need to be safe on the job and the freedom to participate in Health and Safety activities in their workplace. Unfortunately, the guidelines laid out in the reopening program only highlight the Right to Refuse.

All workers have the **Right to Know** what hazards are present on the job, and how these hazards can affect them. You usually learn about the hazards during health and safety training sessions and through on-the-job instructions. This includes the employer ensuring competent supervision to stay healthy and safe.

The CSA Z1002 Standard "Occupational health and safety - Hazard identification and elimination and risk assessment and control" uses the following terms:

- Harm – physical injury or damage to health.
- Hazard – a potential source of harm to a worker.

COVID-19 is a workplace hazard if it is found in your workplace.

Hazard identification is part of the process used to evaluate if any particular situation, item, thing, etc. that may have the potential to cause harm. Overall, the goal of hazard identification is to find and record possible hazards that may be present in the workplace. It may help to work as a team and include both people familiar with the work area, as well as people who are not – this way you have

both the experienced and fresh eye to conduct the inspection. In the context of COVID-19, this team can identify areas with high potential to allow for transmission of the virus.

If COVID-19 is found in the workplace, the workplace parties investigate the incident to determine the root causes of the infection in order to prevent them from occurring again. The incident investigation will lead to the real cause of why something happened, and armed with that knowledge, affirmative steps can be taken to prevent future accidents from occurring. (CSA Z1005 Standard" Incident Investigation").

All workers have the **Right to Participate** in the workplace health and safety activities through the Health and Safety Committee (HSC) or as a worker health and safety representative.

The Occupational Health and Safety Act (OHSA) gives workers the right to participate in health and safety decisions in their workplace. Depending on the size of the workplace, the worker can participate through a health and safety committee, as a worker health and safety representative or simply by providing suggestions through their supervisor or worker representative on the committee.

Workplaces with 20 or more workers or where a designated substance regulation applies require the employer to form and maintain a health and safety committee.

The committee is made up of management and workers who meet to identify and recommend solutions to health and safety problems. They make sure that health and safety concerns are brought into the open and are kept there until they are fixed. One of the committee's important duties is to do regular inspections of the workplace to identify any health and safety issues and to participate in incident investigations such as critical injuries and fatalities. In the context of COVID-19 this includes areas where there is potential for transmission of the virus.

Workplaces with six to 19 workers where there is no health and safety committee required, and some construction projects, still need a health and safety representative for the workers. The workers choose the representative who then deals with health and safety problems in the workplace much the same way health and safety committees do.

For all health and safety concerns, the worker talks to their supervisor and their health and safety representative or members of the health and safety committee. It is by asking questions they will get answers to their health and safety concerns that they must understand.

Workers have the **Right to Refuse** unsafe work. If a worker believes their job is likely to endanger them or another worker, they have an obligation to report the unsafe situation to management. If the situation is not corrected and they feel their health and safety is still in danger, they have the right under the OHSA to refuse to perform the work without reprisal.

There is a set work refusal-procedures that the worker member of the health and safety committee or a health and safety representative and the supervisor are required to follow:

- They must investigate the problem.
- The worker will wait in a safe place while they do this.

- The worker is an important part of the investigation, as they will be the one to decide if the problem has been fixed.
- If the problem is resolved, and most are, they return to work.

Everyone has this right even if they think it is unsafe but are unsure.

Employer Responsibilities

The Re-open Ontario website provides some basic information on employer responsibilities but the legal responsibilities go much further than the website suggests. We fear that without direct guidance from government many employers who do not have in-house health and safety expertise will misunderstand the guidance as fulsome and miss the mark on achieving their full responsibilities in protecting the health and safety of their staff and ultimately the public.

Under Ontario's Occupational Health and Safety Act an employer must:

- Establish and maintain a health and safety committee, or cause workers to select at least one health and safety representative. In the context of COVID-19, this committee must be involved in planning protocols and procedures and eliminating risks.
 - The committee is an advisory body that helps to stimulate or raise awareness of health and safety issues in the workplace, recognizes and identifies workplace hazards and develops recommendations for the employer to address these hazards.
 - The committee holds regular meetings and conducts regular workplace inspections and makes written recommendations to the employer for the improvement of the health and safety of workers.
 - Joint health and safety committees are a key element of a well-functioning workplace internal responsibility system.
- Take every reasonable precaution to ensure the workplace is safe.
 - Workers cannot be threatened or penalized because they followed the Occupational Health and Safety Act (OHSA) or tried to have it enforced. This action is called a reprisal and it is against the law.
 - Workers can file a written complaint to the OLRB describing what happened to them and what they would like the OLRB to do, or
 - They can ask a Ministry of Labour, Training and Skills Development Occupational Health and Safety Inspector to make a referral to the Ontario Labour Relations Board
- Train employees about any potential hazards and in how to safely use, handle, store and dispose of hazardous substances and how to handle emergencies. This includes how to stay safe from COVID-19 even while interacting with others.

- Training is a key way employers meet this obligation. Specifically **mandated training** includes WHMIS, Certification of Joint Health and Safety Committees and training for certain equipment operator (<https://www.whsc.on.ca/training>).
- Make sure workers use any necessary personal protective equipment.
 - The hierarchy of controls is a set of practices an employer can consider to protect workers from exposure. The controls are considered, in order, from most effective and protective to the least effective and protective.
 - *Elimination or substitution*: Remove or change substances or processes that could be harmful.
 - *Engineering*: Design the work area to reduce exposure to hazards (for example, install ventilation or barriers).
 - *Administrative controls*: Provide training and supervision on how to avoid exposure to hazards and limit exposures through work scheduling and breaks.
 - *Personal protective equipment*: Have workers wear protective gear, such as respirators to prevent them from breathing in hazardous substances.
 - Laws and regulations ensure that hazard information is shared. Read up on the rights described in the Occupational Health and Safety Act (OHSA) and the regulation for Workplace Hazardous Materials Information Systems (WHMIS).
 - Other regulations important for protection from workplace exposures include, but are not limited to:
 - O. Reg. 490/09: Designated Substances
 - O. Reg. 833: Control of Exposure to Biological or Chemical Agents
 - O. Reg. 278/05: Designated Substance – Asbestos on Construction Projects and in Buildings and Repair Operations
 - O. Reg. 381/15: Noise
 - O. Reg. 474/07: Needle Safety Regulation
 - O. Reg. 861: X-ray Safety
- Immediately report all critical injuries (including contracting COVID-19) to the government department responsible for Occupational Health and Safety:
 - An employer needs to notify the Ministry of Labour, Training and Skills Development, the workplace joint health and safety committee or health and safety representative, and the union (if there is one) when:
 - someone is killed
 - someone is critically injured
 - places life in jeopardy
 - produces unconsciousness
 - results in substantial loss of blood
 - Involves the fracture of a leg or arm, including a wrist, hand, ankle, foot or multiple fingers or toes
 - involves the amputation of a leg, arm, hand, foot or multiple fingers or toes

- consists of burns to a major portion of the body
 - causes the loss of sight in an eye
 - COVID-19 is likely to be considered a critical injury
 - one of your workers has an occupational illness
 - there is an accident, explosion or fire, or there is an incident of workplace violence and someone is injured and can't do their usual work or needs medical attention
 - there is an accident or unexpected event on a construction site or in a mine or mining plant, even if no one is hurt
 - you do not own the workplace and the joint health and safety committee or health and safety representative makes you aware of a potential structural inadequacy of the building that could be a hazard to workers
- These requirements are in sections 51, 52, 53 and clause 25(2)(n) of the OHSA.
 - The Joint Health and Safety Committees or Health and Safety representatives also have the right to investigate any critical occupational illness. During the SARS outbreak, the Ministry of Labour did confirm that Probable SARS cases were critical injuries. Therefore, when Joint Health and Safety Committees have been notified of critical illnesses, such as Probable SARS, they should immediately initiate their Critical Injury Investigation as per section 9(31) of the Occupational Health and Safety Act.
 - Once you become aware that a worker has an occupational illness, or that a claim for an occupational disease has been filed with the WSIB, you must report within 4 days to:
 - a director of the Ministry of Labour
 - your joint health and safety committee or representative
 - your trade union, if any
- Appoint a competent supervisor who sets the standards for performance, and who ensures safe working conditions are always observed.
 - The role of a supervisor is defined by responsibility and job function **not** by title. Any one of the following may be considered supervisors: foreman, lead hand, site superintendent, charge hand, journeyman, trainer, an individual temporarily assigned as an “assistant” who is a competent person.
 - Employers are also required to ensure that their workers and supervisors complete, or have completed an occupational health and safety awareness training program that meets regulatory requirements in O. Reg.297/13, Health and Safety Awareness and Training.
 - The mandatory occupational health and safety awareness training requirement applies to all workplaces covered under the OHSA, such as construction projects, retail stores, hospitals and long-term care facilities, mines and mining plans, and farming operations. Note that awareness training does not replace other training and educational requirements under the OHSA.

References:

<https://www.ontario.ca/document/guide-occupational-health-and-safety-act/part-iii-duties-employers-and-other-persons>

<https://www.ontario.ca/page/guide-health-and-safety-committees-and-representatives>

<https://www.ontario.ca/document/guide-occupational-health-and-safety-act/part-v-right-refuse-or-stop-work-where-health-and-safety-danger>

<https://www.whsc.on.ca/training>

<http://www.owa.gov.on.ca/en/Pages/default.aspx>

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