

2004/09/14-03

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA

RESOLUTION OF THE BOARD OF DIRECTORS

**Re: Amendment to the occupational environment requirements in
Part 4 of the *Occupational Health and Safety Regulation*
(B.C. Reg. 296/97, as amended)**

WHEREAS:

Pursuant to section 225(1) of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 and amendments thereto ("*Act*"), the Workers' Compensation Board ("*WCB*") may make regulations the *WCB* considers necessary or advisable in relation to occupational health and safety and occupational environment;

AND WHEREAS:

Part 4 of the *Occupational Health and Safety Regulation* ("*OHSR*") contains occupational environment requirements relating to washroom facilities, eating areas and change areas;

AND WHEREAS:

A review of the occupational environment requirements was undertaken to address outdated provisions, expand the scope of application, and remove duplication within the *OHSR*;

AND WHEREAS:

The *WCB*, pursuant to its mandate under the *Act*, has proposed amendments to Part 4 of the *OHSR*, and has given notice of the proposed amendments and held a public hearing on the proposed amendments in accordance with section 226(1) of the *Act*;

AND WHEREAS:

The Board of Directors, after due consideration of all presentations to the WCB, considers it necessary and advisable in accordance with the WCB's mandate under the *Act* in relation to occupational health and safety and occupational environment, to amend the occupational environment requirements in Part 4 of the *OHSR*;

AND WHEREAS:

The Program Design Division will prepare practice guidelines in support of the regulatory amendments;

AND WHEREAS:

Pursuant to the Provincial Government's *Regulatory Reform Policy*, the Board of Directors has evaluated the proposed regulatory amendments according to the established regulatory criteria;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. The regulatory amendment to the *OHSR*, as set out in Appendix A, is approved.
2. The Regulatory Criteria Checklist in Appendix B is approved.
3. The above regulatory amendments will be deposited with the Registrar of Regulations in such form as may be required by the Registrar.
4. The above regulatory amendments come into force January 1, 2005.

DATED at Nanaimo, British Columbia, September 14, 2004.

By the Workers' Compensation Board

**DOUGLAS J. ENNS, CHAIR
BOARD OF DIRECTORS**

APPENDIX A

THE BOARD OF DIRECTORS RESOLVES THAT:

1 *Sections 4.84 to 4.106 of the Occupational Health and Safety Regulation, B.C. Reg. 296/97, are repealed and the following substituted:*

Eating areas

- 4.84** (1) Workers must not keep or consume food in an area of a workplace where it could become unwholesome because of workplace contaminants.
- (2) The employer must ensure that an area suitable for the storage and consumption of food is provided for workers if
- (a) there is a risk that food stored or consumed at a workplace may become unwholesome because of workplace contaminants, or
 - (b) food storage or consumption is restricted or prohibited at the workplace.

Washroom facilities

- 4.85** (1) Except as provided by subsection (2), the employer must ensure that a sufficient number of plumbed washroom facilities are readily available for workers.
- (2) If plumbed washroom facilities cannot be provided because of the nature of the workplace or the nature of the work in which the worker is involved, the employer must
- (a) provide access to portable washroom and hand-washing facilities, or
 - (b) make such other reasonable arrangements to accommodate workers as the circumstances allow, if access to portable washroom and hand-washing facilities cannot be provided.
- (3) If washroom facilities are provided they must be
- (a) maintained in proper working order,
 - (b) kept clean and sanitary, and
 - (c) provided with the supplies necessary for their use.

Change areas

- 4.86** If the employer requires the worker to change into protective work clothing at the workplace, the employer must ensure that adequate change areas are provided.

Unsafe water

- 4.87** The employer must display at every plumbed non-potable water source from which a person might reasonably believe he or she can safely drink, a notice that the water is unfit for human consumption.

2 *The above amendments come into force January 1, 2005.*

DATED at Nanaimo, British Columbia, September 14th, 2004.

By the Workers' Compensation Board

DOUGLAS J. ENNS, CHAIR
BOARD OF DIRECTORS

APPENDIX B

REGULATORY CRITERIA CHECKLIST

Title of Legislation/Regulation* *Occupational Health and Safety Regulation*

**If Regulation, Title of Authorizing Legislation: Workers Compensation Act*

Purpose of Proposal (One-Line Summary): Amendments to update and expand the scope of the occupational environment requirements.

If the answer is “No” for any of the criteria, please attach explanation.

Regulatory Criteria	Criteria Met	
1. Reverse Onus: Need for Regulation is Justified	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Regulatory Design is Results-Based	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
3. Transparent Development of Regulatory Requirements	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
4. Cost- Benefit Analysis	Formal Cost-Benefit Analysis Completed <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Not Required If <i>Not Required</i> , Impacts have been Analyzed <input type="checkbox"/> Yes <input type="checkbox"/> No	
5. Competitive Analysis Completed	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
6. Regulatory Requirements Avoid or Eliminate Duplication with Other Jurisdictions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
7. Timeliness of Regulatory Response	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
8. Plain Language	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
9. Sunset Review and Expiry Provisions	Sunset Review provision <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Sunset Expiry provision <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
10. Replacement Principle Applied	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Number of Regulatory Requirements to be added:
 Number of Regulatory Requirements to be eliminated:
NET CHANGE -127

Douglas J. Enns, Chair
Board of Directors

Date

Contact: **Melinda Kulbaba, Policy Research Analyst**
 Policy & Research Division
 Workers’ Compensation Board

REGULATORY CRITERIA CHECKLIST

A. BACKGROUND

On March 11, 2002 the provincial government introduced a new Regulatory Reform Policy ("Policy"). The Policy is intended to "support the government's commitment to reducing the regulatory burden in British Columbia by one-third over three years." The Policy applies to all proposed legislation and regulations.

The Policy requires the Chair of the Board of Directors ("BOD") to ensure that proposed regulations are evaluated according to regulatory criteria set out in the Policy, and to sign and make public the "Regulatory Criteria Checklist" ("Checklist") when regulations are enacted. The criteria are designed to ensure that all new regulations are results-based and contribute to a more competitive regulatory environment.

The Policy provides for exemptions from the Checklist if the head of the regulatory agency certifies that, in his or her opinion, the regulation satisfies one or more of the following conditions:

- Is non-regulatory in nature;
- Changes fees in respect of a financial year by an annual rate that has been approved by the Treasury Board;
- Relates only to the procedures or practices of a court or tribunal;
- Is required under a national uniform legislation or regulatory scheme, or by federal legislation that has already been assessed against criteria similar to that provided in the Checklist;
- Is fundamentally declaratory or machinery in nature, such as housekeeping changes that clarify or correct a provision without changing procedural requirements;
- Provides for the commencement of an Act or regulation or the commencement of a provision of an Act or regulation;
- Is consolidated and reviewed under the reversion powers in Part 2 of the *Regulations Act*;
- Is transitional in nature;
- The special circumstances of the case, as identified by the responsible minister or head of the regulatory authority, make it impracticable to comply with the Regulatory Criteria.

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The regulatory amendments relating to the occupational environment requirements (“OERs”) do not meet the criteria for an exemption from the Checklist.

B. REGULATORY AMENDMENTS

Part 4 of the *Occupational Health and Safety Regulation* (“OHSR”) contains OERs pertaining to washroom facilities, eating areas and change areas. The washroom requirements are very detailed and include a provision to have at least three separate washrooms in an establishment (i.e., two for staff and one for the public). The requirements pertaining to eating areas are also very detailed, with provisions relating more to comfort than occupational health and safety. Finally, there are personal hygiene requirements for facilities in hazardous environments that are covered under Part 5 (Personal hygiene) and Part 7 (Temperature) of the *OHSR*.

A review of the OERs was undertaken to address outdated provisions. The requirements have remained unchanged for almost 30 years and apply only to factories, offices and shops. In addition, many of the OERs are duplications of other provisions within the *OHSR*. The proposed amendments would broaden the scope of the OERs to apply to all workplaces. A new requirement is also proposed to ensure proper identification of water sources at the workplace that are not suitable for human consumption.

C. EXPLANATORY NOTES

1. Reverse Onus: Need for Regulation is Justified

The regulatory requirements are necessary to maintain reasonable standards for the protection of worker health and safety.

2. Regulatory Design is Results-Based

The amendments replace detailed specific requirements with results-based general requirements. One of the objectives of the Workers’ Compensation Board’s (“WCB”) ongoing regulation review is to strike a reasonable balance between establishing standards or practices for controlling risk and providing flexibility to enable workplaces to determine appropriate measures for achieving compliance. Where appropriate, the amendments allow flexibility at workplaces for determining appropriate control measures, while maintaining a reasonable standard of protection of worker health and safety.

3. Transparent Development of Regulatory Requirements

Section 226 of the *Workers Compensation Act* (“Act”) requires that before making a regulation under Part 3, the WCB must give notice of the proposed regulation in the *BC Gazette* and at least three newspapers and must hold at least one public hearing on the proposed regulation.

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The public hearing was conducted between January 16, 2004 (date of formal notice) and April 16, 2004 (due date for written submissions).¹ Oral hearings were conducted in the following locations:

- Prince George – March 9, 2004
- Nanaimo – March 11, 2004
- Kelowna – March 23, 2004
- Richmond – March 25, 2004
- Nelson – March 30, 2004

The proposed package of amendments regarding the OERs received moderate response during the recent public hearing and was relatively non-controversial. The majority of submissions, from the worker community, expressed concern about the movement of relevant information from the regulation into guidelines. Concern was also expressed over the requirements relating to washrooms, eating areas, change areas and non-potable water sources. Submitters from the employer community expressed support for the proposed changes to expand the application of the requirements to all workplaces.

The concerns raised during the public hearing process were represented in the options presented to the BOD for decision.

4. Cost-Benefit Analysis Completed

A formal cost-benefit analysis was not completed. Generally, cost implications were not raised during the public hearing process.

5. Competitive Analysis Completed

A formal competitive analysis was not completed; however, a review of all Canadian jurisdictions' OERs was conducted. There are several different approaches taken in other Canadian jurisdictions with respect to requirements for washrooms, eating areas and change areas.

Change Areas

Quebec and Ontario have detailed requirements for change areas, including ventilation and lighting requirements. Alberta, New Brunswick, Nova Scotia, Saskatchewan and Prince Edward Island have general requirements (i.e., a suitable accommodation for changing into street clothing must be provided). Five provinces (New Brunswick, Nova Scotia, Prince Edward Island, Quebec and Saskatchewan) only require change rooms where the nature of the employee's work makes it necessary for them to change into work clothes in order to protect the employee's health and safety. Manitoba, Newfoundland, the Northwest Territories and Yukon do

¹ The proposed regulatory amendments were released to stakeholders on December 5, 2003. Technical Information Sessions for interested parties were conducted between January 13, 2004 and February 26, 2004 and were facilitated in 8 locations across the province.

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not have any requirements for change areas. Newfoundland does have a requirement for the provision of accommodations for the storage of street clothing.

Eating Areas

Four jurisdictions (New Brunswick, Nova Scotia, Quebec and Prince Edward Island) have detailed requirements, including ventilation, lighting and heating requirements. New Brunswick and Nova Scotia only require lunchrooms where “the possibility of contamination of food exists”. Ontario has a mix of general and detailed requirements (i.e., eating areas “shall be provided where thirty-five or more workers are employed”, or there is an area “in which there is exposure to a substance that is poisonous by ingestion”). Alberta and Saskatchewan have general requirements (i.e., suitable areas for workers to eat and drink must be provided). Manitoba, Newfoundland, Northwest Territories and Yukon do not have any requirements for eating areas.

Washroom Facilities

Nine jurisdictions (Alberta, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan) have very detailed requirements, including provisions for separate male and female washrooms and formula ratios. Of the nine provinces and territories that require separate male and female washrooms, five (Alberta, New Brunswick, PEI, Quebec, Saskatchewan) only require them if the number of workers in the workplace exceeds nine. The Northwest Territories and Yukon do not have any requirements pertaining to washroom facilities.

The proposed amendments relating to change areas are consistent with the general requirements found in most Canadian jurisdictions (i.e., Alberta, New Brunswick, Nova Scotia, Newfoundland, Saskatchewan and Prince Edward Island). The proposed amendments relating to eating areas are consistent with the approach taken by Alberta and Saskatchewan. The proposed washroom requirements, however, are not consistent with the approach taken by the majority of other provinces and territories, which provide detailed specific requirements. The proposed new requirement to display a notice at plumbed non-potable water source is unique to British Columbia.

6. Avoid or Eliminate Duplication with Other Jurisdictions

The amendments do not duplicate requirements imposed by other regulatory jurisdictions.

7. Timeliness of Regulatory Response

Changes to regulations must be deposited with the Registrar of Regulations and, pursuant to section 227 of the *Act*, may only come into force at least 90 days after their deposit under the *Regulations Act*.

To ensure successful implementation of the new requirements, the amended regulation will be effective January 1, 2005.

The amended regulation will be available on the WCB's website and a communications strategy has been developed to ensure workplace parties are made aware of the changes. Guidelines have been drafted to provide additional clarity on the new requirements and assist with compliance.

8. Plain Language

The amendments are drafted in plain language.

9. Sunset Review and Expiry Provisions

Sunset review and expiry provisions are not required. Section 228 of the *Act* requires the WCB to undertake a process of ongoing review of and consultation on its regulations to ensure that they are consistent with current workplace practices, technological advances and other changes affecting occupational health and safety and occupational environment.

10. Replacement Principle Applied

The amendments result in a reduction of 127 regulatory requirements.