

2007/10/04-02

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA
RESOLUTION OF THE BOARD OF DIRECTORS

RE: Amendments to requirements of the *Occupational Health and Safety Regulation (BC Regulation 296/97, as amended)*, pertaining to working alone or in isolation

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 it considers necessary or advisable in relation to occupational health and safety and occupational environment;

AND WHEREAS:

The WCB, pursuant to its mandate under the *Act*, has proposed amendments to Part 4 of the *OHSR*, relating to working alone or in isolation, and has given notice of the proposed amendments, conducted consultations and held a public hearing on the proposed amendments in accordance with section 226(1) of the *Act*.

AND WHEREAS:

Pursuant to section 228 of the *Act*, a review of the above Part was undertaken by the WCB as part of the process of ongoing regulation review of and consultation on its regulations to ensure they are consistent with current workplace practices, technological advances and other changes affecting occupational health and safety and occupational environment;

AND WHEREAS:

The BOD, 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 Part 4 of the *OHSR*;

AND WHEREAS:

The WCB must specify the date on which regulations come into force, which date must be at least 90 days after their deposit under the *Regulations Act*, as per section 227 of the *Act*.

AND WHEREAS:

Pursuant to the Provincial Government's *Regulatory Reform Policy*, the BOD has evaluated the proposed regulatory amendments according to the established regulatory criteria.

THE BOARD OF DIRECTORS RESOLVES THAT:

1. The regulatory amendments to the *OHSR*, as set out in Appendix A, are 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 on February 1, 2008.

Dated at Richmond, British Columbia, October 4, 2007.

By the Workers' Compensation Board

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

APPENDIX A

THE BOARD OF DIRECTORS RESOLVES THAT:

1 Part 4 of the Occupational Health and Safety Regulation, B.C. Reg. 296/97, is amended by adding the following sections after the heading “Working Alone or in Isolation”:

Definition

4.20.1 In sections 4.20.2 to 4.23, “**to work alone or in isolation**” means to work in circumstances where assistance would not be readily available to the worker

- (a) in case of an emergency, or
- (b) in case the worker is injured or in ill health.

Hazard identification, elimination and control

4.20.2(1) Before a worker is assigned to work alone or in isolation, the employer must identify any hazards to that worker.

- (2) Before a worker starts a work assignment with a hazard identified under subsection (1), the employer must take measures
 - (a) to eliminate the hazard, and
 - (b) if it is not practicable to eliminate the hazard, to minimize the risk from the hazard.

(3) For purposes of subsection (2) (b), the employer must minimize the risk from the hazard to the lowest level practicable using engineering controls, administrative controls or a combination of engineering and administrative controls.

2 Section 4.21 (1) is repealed and the following substituted:

- (1) The employer must develop and implement a written procedure for checking the well-being of a worker assigned to work alone or in isolation.

3 Section 4.22 is amended by striking out “required to work in the circumstances”.

4 The following sections are added:

Late night retail safety procedures and requirements

4.22.1(1) In this section:

“**late night hours**” means any time between 10:00 p.m. and 6:00 a.m.;

“**late night retail premises**” means

- (a) a gas station or other retail fueling outlet, or
- (b) a convenience store or any other retail store where goods are sold directly to consumers

that is open to the public for late night hours.

- (2) If a worker is assigned to work alone or in isolation in late night retail premises and there is any risk of harm from a violent act to the worker, then, in addition to any other obligations the employer has under sections 4.20.2 to 4.23,

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- (a) the employer must develop and implement a written procedure to ensure the worker's safety in handling money, and
- (b) when that worker is assigned to work late night hours, the employer must also do either or both of the following:
 - (i) ensure that the worker is physically separated from the public by a locked door or barrier that prevents physical contact with or access to the worker;
 - (ii) assign one or more workers to work with the worker during that worker's assignment.
- (3) A worker described in subsection (2) must be trained in the written procedure referred to in that subsection.

Mandatory prepayment for fuel

- 4.22.2** An employer must require that customers prepay for fuel sold in gas stations and other retail fueling outlets.

5 *Section 4.23 is repealed and the following substituted:*

Annual reviews of procedures

- 4.23** The procedures referred to in sections 4.21 and 4.22.1 must be reviewed at least annually, or more frequently if there is
- (a) a change in work arrangements which could adversely affect a worker's well-being or safety, or
 - (b) a report that the procedures are not working effectively.

6 *The above amendments come into force on February 1, 2008.*

Dated at Richmond, British Columbia, October 4, 2007.

By the Workers' Compensation Board

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

Regulatory Criteria Checklist

INCLUDING SMALL BUSINESS LENS

The purpose of the checklist is to demonstrate that legislative and regulatory changes have been developed according to the regulatory reform policy, while still protecting public health, safety and the environment.

Name of authorizing legislation: Workers Compensation Act

Name of regulation, if applicable: Occupational Health and Safety Regulation (“OHSR”)

Purpose: Amendments to Part 4 of the OHSR to maintain or enhance worker health and safety

If the answer is “NO” to any of the below criteria, please attach an explanation.

Regulatory Criteria	Criteria Met
1. Reverse Onus: Need is Justified <ul style="list-style-type: none"> - Has the public policy been defined? - Has the scope of the public policy problem been assessed? - Is government intervention necessary to address the problem? - Can a flexible policy be designed to fit different circumstances? - Is there a way compliance can be voluntary? No 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
2. Cost-Benefit Analysis <ul style="list-style-type: none"> - Is the benefit to government or external partners worth the increased cost to business and those who must comply? - If a formal cost-benefit analysis is not required, have the impacts of the requirements been analyzed? 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
3. Competitive Analysis <ul style="list-style-type: none"> - Has the impact of the requirements on British Columbia’s economic competitiveness been assessed? - Have the requirements been compared with other relevant jurisdictions? - Have the regulatory requirements been analyzed for compliance with British Columbia’s obligations under the Trade, Investment, and Labour Mobility Agreement? 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
4. Streamlined Design <ul style="list-style-type: none"> - Do the requirements avoid or eliminate duplication or overlap with federal or local government requirements, or those of other ministries? - Can they be streamlined, harmonized with or incorporated into existing legislation/regulation/policy? - Has business process mapping been undertaken to streamline the requirements and lessen the time needed to comply? N/A 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
5. Replacement Principle <ul style="list-style-type: none"> - Will one regulatory requirement be eliminated for each new regulatory requirement introduced by the legislation or regulation? 	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
6. Results-Based Design <ul style="list-style-type: none"> - Does the design reflect government’s commitment to regulatory requirements that are results-based and use scientific evidence? - Have market incentives been considered to achieve compliance and regulatory objectives? 	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

7. Transparent Development

YES NO

- Are the requirements transparent for ease of access, understanding and compliance?
- Have interested parties had an opportunity to present their views during the development of the requirements?
- Have interested parties had the opportunity to see and comment on the proposed requirements?

8. Time and Cost of Compliance

YES NO

- Has the amount of time needed to comply been reduced?
- Can compliance occur with existing resources (e.g. no additional staff, accountant, lawyer, is required)? **No**
- No additional paperwork is required (costing time and money). If additional paperwork results, can this be incorporated into or streamlined with existing paperwork?
- Can compliance occur without specialized training? If training is needed, is it equally accessible to the rural areas of the province and for persons who do not have access to high speed (broad band) Internet?
- Have government service standards been set (e.g. response or turnaround time)?
- Have steps been considered to ensure that those who administer the requirements will respond in a timely way to those who are affected by the requirements?

9. Plain Language

YES NO

- Have the requirements been drafted in a way that is easy to understand and facilitates compliance?

10. Simple Communications

YES NO

- Will this change be communicated?
- Can it be described in less than one page?
- Can it be added to existing small business information sources such as the Small Business BC website?

11. Sunset Review/Expiry Principle

YES NO

- Has a date been set to review the requirements to ensure continued relevancy, or does the legislation or regulation contain a sunset provision for requirements to expire?

Number of Regulatory Requirements to be added:	7
Number of Regulatory Requirements to be eliminated:	0
NET CHANGE:	7

Responsible Minister or Head of Regulatory Authority

Douglas J. Enns, Chair
Board of Directors
Workers' Compensation Board

October 4, 2007

Date

Ministry/Agency and Contact:

Anne Burch, Director, Prevention Policy and Regulation Review, Policy and Research Division, WorkSafeBC - WCB, (tel): 604-244-6186

1. *Reverse Onus: Need is Justified*

These amendments are necessary to maintain reasonable standards for the protection of worker health and safety.

These amendments to the *OHSR* relate to Part 4, General Conditions, relating to working alone or in isolation.

Compliance with the *OHSR* is mandatory.

2. *Cost-Benefit Analysis*

These amendments to the *OHSR* do not warrant a formal cost-benefit analysis, however the impacts of the requirements have been analyzed.

3. *Competitive Analysis Completed*

The nature of these amendments to the *OHSR* does not warrant a formal competitive analysis. Where possible, the requirements have been compared to other jurisdictions. The *OHSR* is outside of the requirements of the Trade, Investment, and Labour Mobility Agreement.

4. *Streamlined Design*

The amendments do not duplicate requirements imposed by another regulatory jurisdiction.

5. *Replacement Principle Applied*

The amendments result in a net addition of 7 regulatory requirements.

6. *Results-Based Design*

These amendments are a mix of results-based and prescriptive requirements. One of the objectives of the WCB's 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 for workplaces to determine appropriate control measures, while maintaining a reasonable standard of protection of worker health and safety.

7. *Transparent Development*

Section 226(1) of the *Workers Compensation Act* requires three conditions to be met before making a regulation, as follows:

- 226 (1) Before making a regulation under this Part, the Board
- (a) must give notice of the proposed regulation in the Gazette and in at least 3 newspapers, of which one must be published in the City of Victoria and one in the City of Vancouver,
 - (b) must hold at least one public hearing on the proposed regulation, and
 - (c) may conduct additional consultations with representatives of employers, workers and other persons the Board considers may be affected by the proposed regulation.

The three conditions have been met for the 2007 regulatory amendment process:

a. Notice was published in the Gazette and in the following 10 newspapers:

- Kelowna Capital News
- Kelowna Daily Courier
- Nanaimo Bulletin
- Nanaimo Daily News
- Nelson Daily News
- Prince George Citizen
- Prince George Free Press
- Vancouver Province
- Vancouver Sun
- Victoria Times Colonist

b. A public hearing was conducted pursuant to Resolution #2007/04/25-01. The Hearing Panel was comprised of Roberta Ellis (Chair), Anne Burch (Vice Chair), and Ed Bates (General Counsel).

The public hearing was conducted between May 3, 2007 (date of formal notice) and July 13, 2007 (due date for written submissions). Oral hearings were conducted in five locations, namely Vancouver, Kelowna, Nanaimo, Nelson and Prince George on June 12, 14, 19, 21 and 26, respectively. Two public hearing sessions were scheduled on each of these days, from 3:00 to 5:00 pm, and from 7:00 to 9:00 pm, to ensure maximum accessibility by stakeholders; and

c. A number of avenues were provided for stakeholders to give feedback to these proposed amendments to the *OHSR* prior to the formal public hearing. The proposed amendments were:

- placed on the WorkSafeBC website and stakeholders advised of the link;
- sent to over 1600 persons via E-news;
- provided to the Policy and Practice Consultative Committee members;
- the focus of 16 consultation sessions with over 150 people, including:
 - Council of Construction Associations on January 10, 2007;
 - Employers' Forum on January 16, 2007;
 - Stakeholders in general on January 18, 2007;
 - Safety Network on January 22, 2007;
 - Health care employers and workers on January 24, 2007;

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- Steelworkers Union on January 30, 2007;
- Representatives regarding Part 30 relating to fume hoods on February 5, 2007;
- Representatives from health workers on February 7, 2007;
- Council of Forest Industries on February 7, 2007;
- Ministry of Forests on February 8, 2007;
- BC Federation of Labour on February 9, 2007;
- Representatives from health care employers on February 12, 2007;
- Forest Safety Council on December 15, 2006 and February 14, 2007; and
- Association of Professional Engineers & Geoscientists of BC, and the Association of Professional Foresters on February 26, 2007.

8. *Time and Cost of Compliance*

Amendments to the *OHSR* are intended to keep workers safe from injury, illness or/and disease. The amount of time required to comply has not been reduced. Additional staff or resources may be required. Once the regulation becomes effective, all employers are expected to comply with the new regulations.

9. *Plain Language*

The amendments are drafted in plain language.

10. *Simple Communication*

Changes to regulations must be deposited with the Registrar of Regulations pursuant to the *Regulations Act* and may come into force no sooner than 90 days after their deposit, pursuant to section 227 of the *Workers Compensation Act*. To ensure successful implementation of the new requirements, the amended regulations will be effective February 1, 2008.

The amended regulation will be posted on the WorkSafeBC website. The Policy and Practice Consultative Committee, an advisory committee comprised of representatives from employers and workers, will be advised. An E-news notification will be sent to over 1700 stakeholders. A communications strategy has been developed to ensure workplace parties are aware of the changes. Guidelines have been drafted as deemed necessary to provide additional clarity on the new requirements and to assist with implementation and compliance.

11. *Sunset Review and Expiry Provisions*

Sunset review and expiry provisions are not required. Section 228 of the *Workers Compensation 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.