

PART 3: RIGHTS AND RESPONSIBILITIES

OCCUPATIONAL HEALTH AND SAFETY PROGRAMS

- When program required** 3.1 (1) An occupational health and safety program as outlined in section 3.3 must be initiated and maintained ~~by each employer having~~
- (a) **by each employer having**
 - (i) a workforce of 20 or more ~~workers~~ **workers, and**
 - (ii) ~~in a~~ **at least one** workplace **that is** determined to be not low risk under section 3.16 (2) (b), or
 - (b) **by each employer having** a workforce of 50 or more workers. ~~in a workplace determined to be low risk under section 3.16 (2) (b).~~
- (1.1) If subsection (1) (a) or (b) applies to the employer, the occupational health and safety program applies to the whole of the employer's operations.**
- (2) Despite subsection (1) an occupational health and safety program may be required in any workplace when, in the opinion of an officer, such a program is necessary.

Explanatory Note

Prior to March 30, 2004, the *Occupational Health and Safety Regulation* (“OHSR”) required employers who had a large workforce but a small number of workers at each individual worksite to initiate and maintain an occupational health and safety (“OHS”) program. The criteria for determining whether an employer needed to comply with this requirement was based on the first aid hazard rating of the industry in which the employer was classified.

At that time, section 3.1 of the *OHSR* provided as follows:

- (1) An occupational health and safety program as outlined in section 3.3 must be initiated and maintained by each employer having
 - (a) a work force of 20 or more workers, *in an industry classified as “A” or “B” hazard in Part 33 (Occupational First Aid), or*
 - (b) a work force of 50 or more workers *in an industry classified as “C” hazard in Part 33.* [emphasis added]
- (2) Despite subsection (1) an occupational health and safety program may be required in any workplace when, in the opinion of an officer, such a program is necessary.

Effective March 30, 2004, the occupational first aid provisions in the *OHSR* were amended to adopt performance-based requirements for first aid. Consequential to the amendments specific to first aid requirements, an amendment was made to a section 3.1 of the *OHSR* that describes when an employer must initiate and maintain an OHS program. The criteria for determining when an OHS program is required were amended to parallel the new risk assessment required by employers in the occupational first aid provisions.

A recent review of this regulation has resulted in the identification of an inadvertent exemption of employers who have a large workforce (but a small number of workers at each individual

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IN THE OCCUPATIONAL HEALTH AND SAFETY REGULATION**

worksite), from maintaining an OHS program as required prior to March 30, 2004.

The use of the terms “industry” and “workforce” do not distinguish between employers based upon the number of workers in a particular work site.

Effective March 30, 2004 section 3.1 of the *OHSR* provides as follows:

- (1) An occupational health and safety program as outlined in section 3.3 must be initiated and maintained by each employer having
 - (a) a workforce of 20 or more *workers in a workplace determined to be not low risk under section 3.16(2)(b)*, or
 - (b) a workforce of 50 or more workers *in a workplace determined to be low risk under section 3.16(2)(b)*. [emphasis added]
- (2) Despite subsection (1) an occupational health and safety program may be required in any workplace when, in the opinion of an officer, such a program is necessary.

An amendment is required to existing section 3.1 (1) of the *OHSR* to clarify the intent of the requirement, which is to maintain the requirement that existed prior to March 30, 2004. The requirement is that employers that have a large workforce but a small number of workers at each individual worksite must initiate and maintain an OHS program. The proposal would have no impact on employers who were in compliance with the OHS program requirement prior to March 30, 2004. The proposal would reinstate the substantive elements of the requirement that existed prior to March 30, 2004.

Section 3.1 (1) (b) has been amended to remove wording that is redundant. Given the wording in subsection (1) (a), the logical conclusion would be that subsection (1) (b) would apply to a workforce of 50 or more workers in a workplace determined to be low risk (i.e., subsection (1) (a) would apply to a workforce of 50 or more workers in a workplace determined to be not low risk.)