# PREVENTION MANUAL

# PREFACE

Section 82 of the *Workers Compensation Act* provides that the Board of Directors of the Workers' Compensation Board must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation and occupational safety and health (or prevention).

The policies of the Board of Directors consist of:

(a) The statements contained under the heading "Policy" in the *Assessment Manual,*
(b) The statements contained under the heading "Policy" in the *Prevention Manual,*
(c) The *Rehabilitation Services & Claims Manual*, Volume I and Volume II, except statements under the headings "Background" and "Practice" and explanatory material at the end of each Item appearing in the new manual format,
(d) The *Classification and Rate List*, as approved annually by the Board of Directors,
(e) Decisions No. 1 – 423 in volumes 1 – 6 of the *Workers' Compensation* Reporter prior to the date each Decision was retired from policy status,[1] and
(f) Policy decisions of the former Governors and the former Panel of Administrators still in effect immediately before February 11, 2003,

as well as amendments to policy in the four policy manuals, any new or replacement manuals issued by the Board of Directors, any documents published by the Workers' Compensation Board that are adopted by the Board of Directors as policies of the Board of Directors, and all decisions of the Board of Directors declared to be policy decisions.

The *Manual* in which this preface appears contains current Board policy with respect to prevention matters. It is used by Board staff in carrying out their responsibilities under the *Workers Compensation Act*. As new policy is developed and approved in this area, the *Manual* will be updated by issuing replacement pages.

[1] All of Decisions No. 1 – 423 have been retired from policy status. An explanation of "retirement" is found in APPENDIX 1 to this *Manual*.

# ORGANIZATION OF THIS MANUAL

This *Manual* sets out the policies and practices that relate to the Board's Prevention mandate.

The *Manual* is divided into two parts:

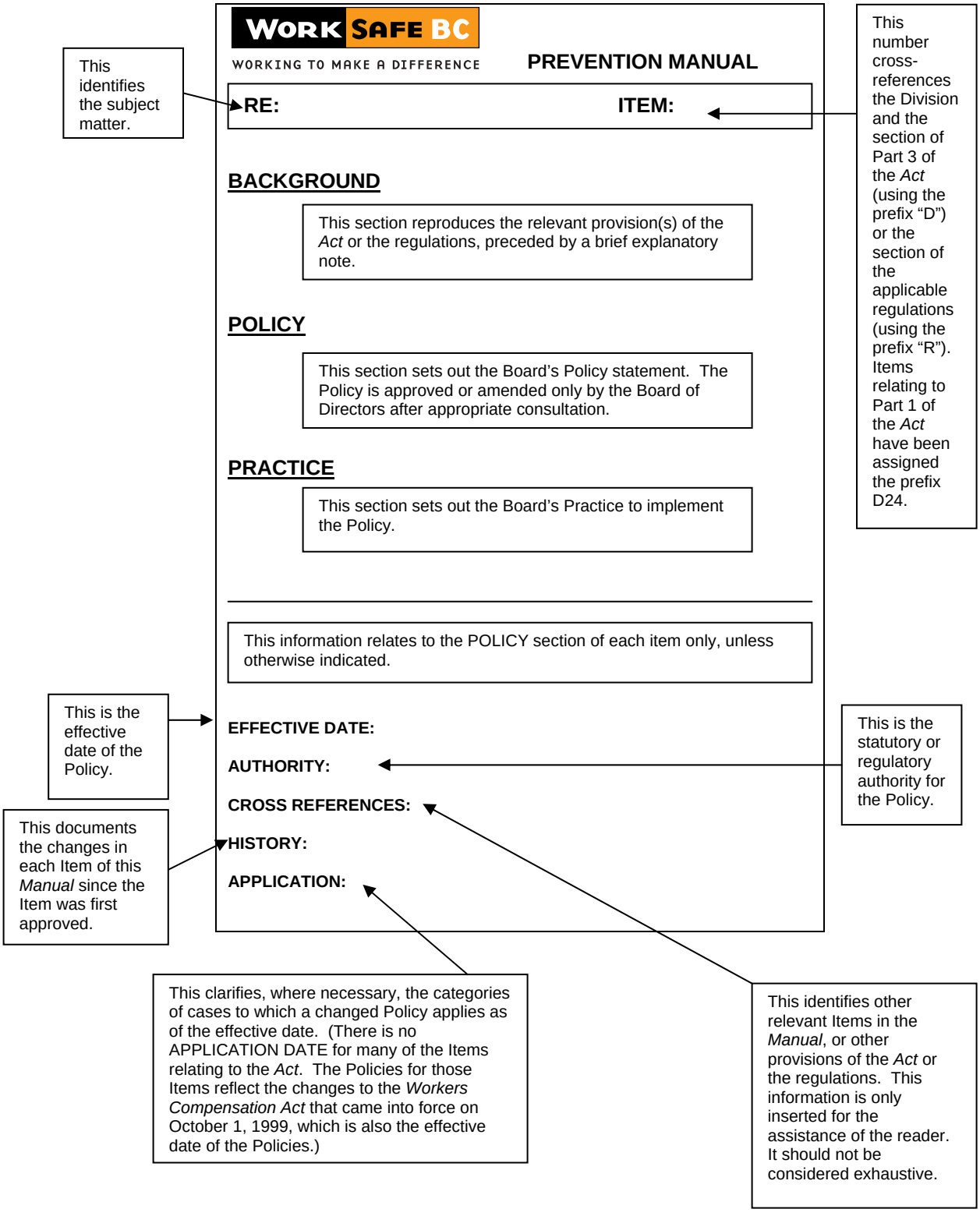
> Policies and Practices applying to the occupational health and safety provisions of the *Workers Compensation Act*
>
> Policies and Practices applying to provisions of the occupational health and safety regulations

The *Manual* consists of a number of "Items" that relate to particular provisions. An explanation of how the Items are organized is found on the following page.

The Background section for various Items reproduces relevant excerpts from the W*orkers Compensation Act* or the Board's occupational health and safety regulations.

The Province of British Columbia holds copyright in the *Workers Compensation Act*. Complete copies are available from Crown Publications in Victoria.

Additional practice information regarding sections of the *Act* or OHS Regulation may be contained in the OHS Guidelines available on the WorkSafeBC website.


WORK SAFE BC
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PREVENTION MANUAL
RE:
ITEM:
BACKGROUND
This section reproduces the relevant provision(s) of the *Act* or the regulations, preceded by a brief explanatory note.
POLICY
This section sets out the Board's Policy statement. The Policy is approved or amended only by the Board of Directors after appropriate consultation.
PRACTICE
This section sets out the Board's Practice to implement the Policy.
This information relates to the POLICY section of each item only, unless otherwise indicated.
EFFECTIVE DATE:
AUTHORITY:
CROSS REFERENCES:
HISTORY:
APPLICATION:
This identifies the subject matter.
This number cross-references the Division and the section of Part 3 of the *Act* (using the prefix "D") or the section of the applicable regulations (using the prefix "R"). Items relating to Part 1 of the *Act* have been assigned the prefix D24.
This is the effective date of the Policy.
This is the statutory or regulatory authority for the Policy.
This documents the changes in each Item of this *Manual* since the Item was first approved.
This clarifies, where necessary, the categories of cases to which a changed Policy applies as of the effective date. (There is no APPLICATION DATE for many of the Items relating to the *Act*. The Policies for those Items reflect the changes to the *Workers Compensation Act* that came into force on October 1, 1999, which is also the effective date of the Policies.)
This identifies other relevant Items in the *Manual*, or other provisions of the *Act* or the regulations. This information is only inserted for the assistance of the reader. It should not be considered exhaustive.

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WORK SAFE BC
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**PREVENTION MANUAL**

# POLICIES AND PRACTICES APPLYING TO THE OCCUPATIONAL HEALTH AND SAFETY PROVISIONS OF THE *WORKERS COMPENSATION ACT*

# DIVISION 1

# INTERPRETATION AND PURPOSES

Division 1 of Part 3 of the *Workers Compensation Act* sets out the definitions applying to Part 3, the purposes and application of the Part and how the Part relates to Part 1 of the *Act*. Division 1 also authorizes the Minister to appoint committees to review Part 3 and the regulations and report back its recommendations.

**RE: Application of the *Act* and Policies** **ITEM: D1-107-1**

# BACKGROUND

## 1. Explanatory Notes

Decision-making at the Workers' Compensation Board is governed by the *Workers Compensation Act*.

Section 82(1)(a) of the *Act* authorizes the Board of Directors to set and revise the Board's policies. These policies are of broad general application and provide further direction to Board officers in dealing with individual matters.

Section 99(2) of the *Act* requires the Board to make decisions based upon the merits and justice of the case, but in so doing to apply a policy of the Board of Directors that is applicable in the case.

The purpose of the POLICY in this Item is to provide direction regarding the interaction between the application of the *Act* and the policies made under the *Act* and the consideration of the individual circumstances of the case.

The POLICY does not comment on documents issued under the authority of the President/Chief Executive Officer of the Board. That is a matter for the President/CEO to address.

## 2. The Act

Section 82(1)(a):

> The board of directors must … set and revise as necessary the policies of the board of directors, including policies respecting compensation, assessment, rehabilitation and occupational health and safety ....

Section 99(2):

> The Board must make its decision based upon the merits and justice of the case, but in so doing the Board must apply a policy of the board of directors that is applicable in the case.

# POLICY

In making decisions, Board officers must take into consideration:

1. the relevant provision or provisions of the *Act*;

2. the relevant policy or policies in this *Manual*; and

3. all facts and circumstances relevant to the case.

By applying the relevant provisions of the *Act* and the relevant policies, Board officers ensure that:

1. similar cases are adjudicated in a similar manner;

2. each participant in the system is treated fairly; and

3. the decision-making process is consistent and reliable.

Section 99(2) of the *Act* provides that:

> The Board must make its decision based upon the merits and justice of the case, but in so doing the Board must apply a policy of the board of directors that is applicable in the case.

In making decisions, Board officers must take into account all relevant facts and circumstances relating to the case before them. This is required, among other reasons, in order to comply with section 99(2) of the *Act*. In doing so, Board officers must consider the relevant provisions of the *Act*. If there are specific directions in the *Act* that are relevant to those facts and circumstances, Board officers are legally bound to follow them.

Board officers also must apply a policy of the Board of Directors that is applicable to the case before them. Each policy creates a framework that assists and directs Board officers in their decision-making role when certain facts and circumstances come before them. If such facts and circumstances arise and there is an applicable policy, the policy must be followed.

All substantive and associated practice components in the policies in this *Manual* are applicable under section 99(2) of the *Act* and must be followed in decision-making. The term “associated practice components” for this purpose refers to the steps outlined in the policies that must be taken to determine the substance of decisions. Without these steps being taken, the substantive decision required by the *Act* and policies could not be made.

References to business processes that appear in policies are only applicable under section 99(2) of the *Act* in decision-making to the extent that they are necessary to comply with the rules of natural justice and procedural fairness. The term “business processes” for this purpose refers to the manner in which the Board conducts its

operations. These business processes are not intrinsic to the substantive decisions required by the *Act* and the policies.

If a policy requires the Board to notify an employer, worker, or other workplace party before making a decision or taking an action, the Board is required to notify the party if practicable. "If practicable" for this purpose means that the Board will take all reasonable steps to notify, or communicate with, the party.

This policy is not intended to comment on the application of practice directives, guidelines and other documents issued under the authority of the President/Chief Executive Officer of the Board. The application of those documents is a matter for the President/CEO to address.

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| | |
|---|---|
| **EFFECTIVE DATE:** | March 3, 2003 |
| **AUTHORITY:** | ss. 82(1)(a) and 99(2), *Workers Compensation Act* |
| **CROSS REFERENCES:** | |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes. |
| **APPLICATION:** | This policy applies to decisions on or after March 3, 2003. |

**RE: Application of Part 3 – Where Jurisdictional Limits Exist** **ITEM: D1-108-1**

# BACKGROUND

## 1. Explanatory Notes

The Canadian Constitution, the *Workers Compensation Act* and other federal and provincial legislation place certain limits on the Board's authority to take measures to prevent workplace injuries and illnesses.

In some cases, the Board may be totally excluded from inspecting certain types of operations. These include operations covered by Part II of the federal *Canada Labour Code*, mines covered by the provincial *Mines Act*, and railways covered by the provincial *Railways Act*.

In other cases, the Board may not be excluded from a particular type of operations, but certain equipment or activities may be covered by a statute or regulation administered by another agency.

These limits are largely matters of general law over which the Board has no control. They are also too complex to state in this Item.

The purpose of this Item is to provide general guidance on how Board officers will exercise their powers in situations where it has been established that there are jurisdictional limits on those powers.

## 2. The Act

Section 108:

> (1) Subject to subsection (2), this Part applies to
>
> (a) the Provincial government and every agency of the Provincial government,
>
> (b) every employer and worker whose occupational health and safety are ordinarily within the jurisdiction of the Provincial government, and

(c) the federal government, every agency of the federal government and every other person whose occupational health and safety are ordinarily within the jurisdiction of the Parliament of Canada, to the extent that the federal government submits to the application of this Part.

(2) This Part and the regulations do not apply in respect of

(a) mines to which the *Mines Act* applies,

(b) [Repealed]

(c) subject to subsection (3), the operation of industrial camps to the extent their operation is subject to regulations under the *Public Health Act*.

(3) The Lieutenant Governor in Council may, by regulation, provide that all aspects of this Part and the regulations apply to camps referred to in subsection (2)(c), in which case this Part and the regulations prevail over the regulations under the *Public Health Act* to the extent of any conflict.

[Note - As of the date of this policy, the federal government had not submitted to the application of Part 3 of the *Act* under section 108(1)(c). Nor had the Lieutenant Governor in Council made regulations relating to camps under section 108(3).]

Section 114:

(1) Without limiting section 8.1, the board may enter into agreements or make arrangements respecting cooperation, coordination and assistance related to occupational health and safety and occupational environment matters with the Provincial government, the government of Canada or the government of another province or territory, or an agency of any of those governments, or with another appropriate authority.

(2) In relation to an agreement or arrangement under subsection (1), the board may

(a) authorize board officers to act on behalf of the other party to the agreement or arrangement, and

(b) authorize persons appointed by the other party to the agreement or arrangement to act as an officer under this Act, subject to any conditions or restrictions established by the board.

# POLICY

**(a) Where, for jurisdictional reasons, the Board is totally excluded from inspecting an operation**

Board officers will not knowingly issue an order or exercise another Board power under Part 3 with respect to an operation in this situation.

If Board officers observe what they believe to be a violation of a statute or a regulation administered by another agency, they will:

- notify the other agency of the observation; and
- cooperate with that agency in dealing with the situation to the extent this is consistent with the Board's mandate and the officers' duties under the *Workers Compensation Act*.

**(b) Where the Board is not totally excluded from inspecting an operation, but certain equipment or activities included in the operation are covered by a statute or regulation administered by another agency**

Board officers will not issue an order or exercise another power to directly enforce a statute or regulation of another agency in this situation.

Board officers may issue an order or exercise another power under the *Workers Compensation Act* where:

- the situation violates the *Workers Compensation Act* or a regulation under that *Act*; and
- the order or exercise of another power is not in conflict with an applicable statute or regulation administered by the other agency.

If the order or exercise of another power appears to be in conflict with an applicable statute or regulation administered by the other agency, Board officers will seek direction from their managers before proceeding.

If Board officers observe what they believe to be a violation of a statute or a regulation administered by another agency, they will:

- notify the other agency of the observation; and
- cooperate with that agency in dealing with the situation to the extent this is consistent with the Board's mandate and the officers' duties under the *Workers Compensation Act*.

## (c) Authority under another statute or regulation or an agreement under Section 114

In some situations, the specific terms of another statute or regulation or an agreement with another agency under section 114 of the *Workers Compensation Act* may authorize Board officers to exercise authority under other statutes or regulations that would not generally be permitted.

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| | |
|---|---|
| **EFFECTIVE DATE:** | October 1, 2001 |
| **AUTHORITY:** | s.108, *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also s.114, *Workers Compensation Act* |
| **HISTORY**: | Housekeeping changes effective April 15, 2016 to update Act reference in background information.<br>Housekeeping changes effective September 15, 2010 to remove outdated background information, delete practice reference and make formatting changes.<br>A housekeeping change was made on December 14, 2001. |
| **APPLICATION:** | This Item applies to situations arising on and after October 1, 2001. |

# DIVISION 2

# BOARD MANDATE

Division 2 of Part 3 of the *Workers Compensation Act* sets out the mandate and jurisdiction of the Board under Part 3.

**RE: Assignment of Board Authority** **ITEM: D2-111-1**

# BACKGROUND

## 1. Explanatory Notes

Section 111 sets out the Board's functions, duties and powers in matters relating to occupational health and safety. The "Board" for this purpose is the corporation known as the Workers' Compensation Board.

The Board of Directors determines what persons should exercise the Board's authority in various areas or the mechanism for making that determination through policy under section 82 of the *Act*.

## 2. The Act

Section 82(1):

> The board of directors must
>
> (a) set and revise as necessary the policies of the board of directors, including policies respecting compensation, assessment, rehabilitation and occupational health and safety, and
>
> (b) set and supervise the direction of the Board.

Section 111(1):

> In accordance with the purposes of this Part, the Board has the mandate to be concerned with occupational health and safety generally, and with the maintenance of reasonable standards for the protection of the health and safety of workers in British Columbia and the occupational environment in which they work.

Section 111(2):

> In carrying out its mandate, the Board has the following functions, duties and powers:
>
> (a) to exercise its authority to make regulations to establish standards and requirements for the protection of the health and safety of workers and the occupational environment in which they work;

(b) to undertake inspections, investigations and inquiries on matters of occupational health and safety and occupational environment;

(c) to provide services to assist joint committees, worker health and safety representatives, employers and workers in maintaining reasonable standards for occupational health and safety and occupational environment;

(d) to ensure that persons concerned with the purposes of this Part are provided with information and advice relating to its administration and to occupational health and safety and occupational environment generally;

(e) to encourage, develop and conduct or participate in conducting programs for promoting occupational health and safety and for improving the qualifications of persons concerned with occupational health and safety and occupational environment;

(f) to promote public awareness of matters related to occupational health and safety and occupational environment;

(g) to prepare and maintain statistics relating to occupational health and safety and occupational environment, either by itself or in conjunction with any other agency;

(h) to undertake or support research and the publication of research on matters relating to its responsibilities under this Act;

(i) to establish programs of grants and awards in relation to its responsibilities under this Act;

(j) to provide assistance to persons concerned with occupational health and safety and occupational environment;

(k) to cooperate and enter into arrangements and agreements with governments and other agencies and persons on matters relating to its responsibilities under this Part;

(l) to make recommendations to the minister respecting amendments to this Act, the regulations under this Part or Part 1 of this Act, or other legislation that affects occupational health and safety or occupational environment;

(m) to inquire into and report to the minister on any matter referred to it by the minister, within the time specified by the minister;

(n) to fulfill its mandate under this Part in a financially responsible manner;

(o) to do other things in relation to occupational health and safety or occupational environment that the minister or Lieutenant Governor in Council may direct.

Section 113(1):

> Subject to sections 239 and 240, the Board has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact and law arising or required to be determined under this Part, and the action or decision of the Board is final and conclusive and is not open to question or review in any court.

## POLICY

The Board of Directors will exercise the following powers and responsibilities as set out in Part 3:

- make recommendations to the minister under section 111(2)(l);
- make inquiries into matters referred by the minister under section 111(2)(m);
- comply with directions of the Lieutenant Governor in Council under section 111(2)(o);
- enter into formal agreements and arrangements with other agencies and governments covered by section 114(2);
- make and amend Board regulations;
- grant exemptions from the application of Part 3 under section 106; and
- approve policies under Part 3 (section 82).

The President/Chief Executive Officer (CEO) has the authority to exercise the remaining powers and responsibilities described in Part 3 and authority over claims cost levies (section 73(1)). The President/CEO also has the authority to assign these powers and responsibilities to divisions, departments, categories of officers or individual officers of the Workers' Compensation Board.

President/CEO assignments will state whether the assignee has the authority to further assign the power or responsibility or whether it must be exercised personally.

The powers and responsibilities described in Part 3 and section 73(1) must be exercised in accordance with the policies of the Board of Directors.

The authority to approve prosecutions under section 214(2) is assigned by the Board of Directors directly to the President/CEO and may not be delegated by the President/CEO without approval of the Board of Directors.

## PRACTICE

The assignments of the President/CEO will be in writing and publicly available.

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**EFFECTIVE DATE:** March 24, 2010
**AUTHORITY:** ss. 82, 111, and 113(1), *Workers Compensation Act*
**CROSS REFERENCES:**
**HISTORY:** Item developed to implement the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998,* effective October 1, 1999. References to Panel of Administrators replaced by references to Board of Directors, on February 11, 2003, to reflect the *Workers Compensation Amendment Act, 2002.* Consequential changes subsequently made to restatement of section 113(1) to implement the *Workers Compensation Amendment Act (No. 2), 2002,* on March 3, 2003.

Amended March 24, 2010 to address authority over claims cost levies and make other minor wording changes.

**APPLICATION:**

**RE: Board Approval** **ITEM: D2-111-3**

# BACKGROUND

## 1. Explanatory Notes

Section 111 sets out the Board's mandate under Part 3.

## 2. The Act

Section 111(1):

> In accordance with the purposes of this Part, the board has the mandate to be concerned with occupational health and safety generally, and with the maintenance of reasonable standards for the protection of the health and safety of workers in British Columbia and the occupational environment in which they work.

Section 111(2), in part:

> In carrying out its mandate, the board has the following functions, duties and powers:
> …
> (c) to provide services to assist … employers and workers in maintaining reasonable standards for occupational health and safety and occupational environment;
>
> (d) to ensure that persons concerned with the purposes of this Part are provided with information and advice relating to its administration and to occupational health and safety and occupational environment generally ….

# POLICY

A submission may be made to have a program, product, machine, equipment or work process evaluated by the Board to determine if it is in compliance with current provisions of Part 3 and the regulations.

The Board will review submissions from an employer, worker, union, or from industry in general and will indicate acceptability or unacceptability under the current provisions of Part 3 and the regulations. The review of submissions to the Board will be limited to an

assessment of those factors covered by the provisions of Part 3 and the regulations that affect the health and safety of workers.

An acceptance will be conditional upon the use of the product, machinery or equipment for its designed purpose, subject to such conditions as may be specified by the Board. Any indication of compliance with the current provisions of Part 3 and the regulations will not be an assurance of continued acceptability.

An acceptance, as described above, is not a general endorsement or certification by the Board of that program, product, machinery, equipment, or work process.

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| | |
|---|---|
| **EFFECTIVE DATE:** | December 15, 2011 |
| **AUTHORITY:** | s.111(1) and (2) (c) and (d), *Workers Compensation Act* |
| **CROSS REFERENCES:** | |
| **HISTORY:** | Policy amended December 15, 2011 to remove the introductory sentence and amend the concluding paragraph.<br><br>Housekeeping changes effective September 15, 2010 to remove reference to the Prevention Division, delete practice reference and make formatting changes.<br><br>Replaces Policy No. 1.2.1 of the Prevention Division *Policy and Procedure Manual* |
| **APPLICATION:** | This Item results from the 2000/2001/2002 “editorial” consolidation of all Prevention policies into the *Prevention Manual*. The POLICY in this Item continues the substantive requirements of Policy No. 1.2.1, as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 1.2.1 was issued. |

**RE: Certificate of Recognition Program** **ITEM: D2-111-4**

# BACKGROUND

## 1. Explanatory Notes

The Certificate of Recognition Program is a voluntary employer certification program intended to motivate employers to take a proactive role in occupational health and safety.

## 2. The Act

Section 36 (in part):

(1) The Board must continue and maintain the accident fund for payment of the compensation, outlays and expenses under this Part and for payment of expenses incurred in administering Part 3 of the *Act*.

Section 42:

> The Board must establish subclassifications, differentials and proportions in the rates as between the different kinds of employment in the same class as may be considered just; and where the Board thinks a particular industry or plant is shown to be so circumstanced or conducted that the hazard or cost of compensation differs from the average of the class or subclass to which the industry or plant is assigned, the Board must confer or impose on that industry or plant a special rate, differential or assessment to correspond with the relative hazard or cost of compensation of that industry or plant, and for that purpose may also adopt a system of experience rating.

Section 107 (in part):

(1) The purpose of this Part is to benefit all citizens of British Columbia by promoting occupational health and safety and protecting workers and other persons present at workplaces from work related risks to their health and safety.

(2) Without limiting subsection (1), the specific purposes of this Part are

...

(f) to foster cooperative and consultative relationships between employers, workers and others regarding occupational health and safety, and to promote worker participation in occupational health and safety programs and occupational health and safety processes,

...

Section 111 (in part):

(1) In accordance with the purpose of this Part, the Board has the mandate to be concerned with occupational health and safety generally, and with the maintenance of reasonable standards for the protection of the health and safety of workers in British Columbia and the occupational environment in which they work.

(2) In carrying out its mandate, the Board has the following functions, duties and powers:

…

(c) to provide services to assist joint committees, worker health and safety representatives, employers and workers in maintaining reasonable standards for occupational health and safety and occupational environment;

…

(e) to encourage, develop and conduct or participate in conducting programs for promoting occupational health and safety and for improving the qualifications of persons concerned with occupational health and safety and occupational environment;

…

(k) to cooperate and enter into arrangements and agreements with governments and other agencies and persons on matters relating to its responsibilities under this Part;

Section 113 (in part):

(5) The Board may charge a class or subclass with the cost of investigations, inspections and other services provided to the class or subclass for the prevention of injuries and illnesses.

# POLICY

See *Assessment Manual* AP1-42-4 for the policy.

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| | |
|---|---|
| **EFFECTIVE DATE:** | January 1, 2019 |
| **AUTHORITY:** | ss. 36, 42, 107, 111, and 113(5), *Workers Compensation Act.* |
| **CROSS REFERENCES:** | See also *Penalties – Criteria for Imposing* (*Prevention Manual* D12-196-1) and *Certificate of Recognition Program (Assessment Manual* AP1-42-4*)*. |
| **HISTORY:** | The revisions to the COR policy approved by BOD resolution 2018/11/22-01 on November 22, 2018 apply to all decisions made on or after January 1, 2019, except for financial incentive decisions relating to a violation of the *Workers Compensation Act* or *Occupational Health and Safety Regulation* that occurred before January 1, 2019. The interim policies continue to apply to those financial incentive decisions relating to violations of the *Workers Compensation Act* or *Occupational Health and Safety Regulation* occurring before January 1, 2019.<br>Interim policy in effect until October 31, 2016.<br>Interim policy extended to December 31, 2017.<br>Interim policy extended to December 31, 2018. |
| **APPLICATION:** | This policy applies to all decisions made on or after January 1, 2019, except for financial incentive decisions relating to a violation of the *Workers Compensation Act* or *Occupational Health and Safety Regulation* that occurred before January 1, 2019.<br><br>The interim policies continue to apply as if unexpired in respect of a financial incentive decision relating to a violation of the *Workers Compensation Act* or *Occupational Health and Safety Regulation* that occurred before January 1, 2019. |

**RE: Varying or Cancelling Previous Decisions or Orders** **ITEM: D2-113-1**

# BACKGROUND

## 1. Explanatory Notes

Section 113(2) sets out the Board's authority to make a new decision or order to vary or cancel a previous decision or order made under Part 3. It is necessary to set out the grounds on which the Board will exercise that authority.

A subsidiary issue relates to the requirements for providing notice and posting that must be observed when the Board makes a new decision or order under section 113(2) to vary or cancel an order. In these cases, it must give notice to the employer or other person in relation to whom the order was made. If the person given notice was required by or under Part 3 to post a copy of the original order or to provide copies of it to a joint committee, worker representative or union, the person must post and provide copies of the notice in accordance with the same requirements under section 189. The general posting requirements in section 154 will apply where posting of the varying or cancelling of an order is required.

## 2. The Act

Section 113(2) to (2.3):

113(2) Despite subsection (1), but subject to subsection (2.1) and sections 189(1) and 190(4), the Board may at any time, on its own initiative, make a new decision or order varying or cancelling a previous decision or order of the Board or of any officer or employee of the Board respecting any matter that is within the jurisdiction of the Board under this Part.

113(2.1) The Board may not make a decision or an order under subsection (2) if
- (a) a review has been requested under section 96.2 in respect of the previous decision or order, or
- (b) an appeal has been filed under section 240 in respect of the previous decision or order.

113(2.2) Despite subsection (1), the Board may review a decision or order made by the Board or by an officer or employee of the Board under this Part but only as specifically provided in sections 96.2 to 96.5.

113(2.3) Despite subsection (1), the Board may at any time set aside any decision or order made by it or by an officer or employee of the Board under this

Part if that decision or order resulted from fraud or misrepresentation of the facts or circumstances upon which the decision or order was based.

Section 189:

(1) If the Board varies or cancels an order, it must give notice to the employer or other person in relation to whom the order was made.

(2) If the person given notice under subsection (1) was required by or under this Part to post a copy of the original order or to provide copies of it to a joint committee, worker representative or union, the person must post and provide copies of the notice in accordance with the same requirements.

# POLICY

This policy addresses the Board's authority, on its own initiative, to make new decisions or orders varying or cancelling previous decisions or orders under section 113(2) of the *Act.*

### (a) "On Its Own Initiative"

It is significant that section 113(2) only authorizes the Board to make a new decision or order varying or cancelling a previous decision or order under Part 3 "on its own initiative". This is to be contrasted with the Board's authority to reopen a matter under Part 1 "on its own initiative, or on application" under section 96(2) of the *Act*. It is also to be contrasted with section 96.5 and section 256, which authorize a review officer and the Appeal Tribunal, respectively, to reconsider decisions on application in certain circumstances.

The use of the words "on its own initiative" in section 113(2), with no mention of "on application", and the availability of a review mechanism under sections 96.2 to 96.5, indicate that the Board is not intended to set up a formal application process under section 113(2) to resolve disputes that parties may have with decisions or orders.

Rather, the Board's authority to vary or cancel is intended to provide a quality assurance mechanism for the Board. The Board is given an opportunity to correct, on its own initiative, any errors it may have made.

This does not, of course, preclude the Board from making a new decision or order varying or cancelling a previous decision or order on the basis of information that may be brought forward by an employer or other party to a decision or order.

### (b) Grounds

The Board may make a new decision or order varying or cancelling a previous decision or order if there are grounds showing either an error of law or policy, or significant new evidence, and the Board determines that either of these grounds require that the previous decision or order be varied or cancelled.

### (c) General Exercise of Authority

In considering whether to make a new decision that varies or cancels a previous decision or order, the Board will take into account the length of time that has elapsed since the decision or order was made. A delay since the previous decision or order was made, in the absence of a reasonable explanation for the delay, is a ground for the Board not to exercise its power to vary or cancel the previous decision or order without considering the merits of the previous decision or order.

Before varying or cancelling a decision or order, the Board will advise any person that may be affected by a new decision and provide an opportunity for these individuals to make comments.

### (d) Authority to Vary or Cancel Reviews and Appeals

The *Act* gives the Board the authority to make final decisions on the matter before it. It also provides rights of review and appeal, but these are subject to time limits. The *Act* shows a general intention as to how disputes concerning decisions or orders should be resolved, and that there be finality in decision-making. This intention must be considered when deciding whether to exercise the discretion provided by section 113(2) to make a new decision varying or cancelling previous decisions or orders.

Subject to grounds being established as set out in (b) above, the Board may make a new decision varying or cancelling a decision or order under section 113(2) on which an available review or appeal was not commenced within the time allowed.

The Board will not, however, make a new decision or order under section 113(2) where the merits of the previous decision have been the subject of a decision on a review by the Review Division or an appeal by the Appeal Tribunal except in accordance with the decision by the Review Division or Appeal Tribunal.

Nor will the Board normally make a new decision or order under section 113(2) where:

- there is a right to a review of the previous decision or order or a right of appeal to the Appeal Tribunal; or
- the previous decision or order is being considered, or will be considered, for the purpose of considering an administrative penalty or similar levy.

**EFFECTIVE DATE:** March 3, 2003
**AUTHORITY:** s.113, *Workers Compensation Act*
**CROSS REFERENCES:**
**HISTORY:** Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.
Item developed to implement the W*orkers Compensation Amendment Act (No. 2), 2002*, effective March 3, 2003.
**APPLICATION:**

# DIVISION 3

# GENERAL DUTIES OF EMPLOYERS, WORKERS AND OTHERS

Division 3 of Part 3 of the *Workers Compensation Act* sets out general duties for employers, workers, supervisors, owners, suppliers, and directors and officers. It describes how persons may be subject to obligations in relation to more than one role and allocates responsibilities when the same obligations apply to more than one person. It also provides for coordination among the owner, prime contractor and employers at multiple-employer workplaces.

**RE: Employer Duty Towards Other Workers – Section 115(1)(a)(ii)** **ITEM: D3-115-1**

# BACKGROUND

## 1. Preamble

A purpose of Part 3 of the *Act* is "to ensure that employers, workers and others who are in a position to affect the occupational health and safety of workers share that responsibility to the extent of each party's authority and ability to do so".[1]

Section 115(1)(a)(ii) reflects that purpose and ultimately requires an employer to ask "Have I done all that I can reasonably do to ensure the health and safety of those other workers?"

This policy is to assist decision makers by providing a consistent approach to interpretation. The policy provides principles to guide decision makers since it is not possible to address every potential workplace arrangement.

Historically, interpretation of section 115(1)(a)(ii) has focused primarily on whether or not the duty applies in a particular situation. This policy simplifies that determination by adopting a broad interpretation as to when the duty applies. This policy then provides practical criteria to determine what the duty means in practice (the scope of the duty).

## 2. Explanatory Notes

This policy addresses an employer's duty towards other workers as set out in section 115(1)(a)(ii) of the *Act.* This states that an employer must ensure the health and safety of *other workers* present at a workplace at which that employer's work is being carried out.

That duty co-exists with the duty that the direct employer and other employers may have towards those workers. In addition, employers may also have distinct duties towards other workers as set out in sections 118, 119 and 120 of the *Act* and various sections of the regulation.

[1] Section 107(2)(e) of the *Act*

### 3. The Act and Occupational Health and Safety Regulation ("OHSR")

***Section 115(1)(a), Act - General duties of employers***

(1) Every employer must

(a) ensure the health and safety of

(i) all workers working for that employer, and

(ii) any other workers present at a workplace at which that employer's work is being carried out….

The Appendix to this policy contains other related sections of the *Act* and OHSR.

## POLICY

Section 115(1)(a)(ii) gives every employer the duty to ensure the health and safety of any other workers present at a workplace at which that employer's work is being carried out.

**Definition**

"*other workers*" refers to workers other than those of the employer. This includes workers of other employers as well as persons deemed to be workers through signing up for Personal Optional Protection (POP).

**When Does The Duty Apply?**

The duty applies whenever *other workers* are present at a workplace at which that employer's work is being carried out.

The employer's work can be carried out in one of two ways:

(a) *other workers* are present at a workplace where the employer's workers are working, or

(b) *other workers* are doing work for the employer's benefit

**What Does the Duty Require? (Scope of the Duty)**

Once the duty applies, section 115(1)(a)(ii) requires an employer to take all reasonable steps in the circumstances to ensure the health and safety of the *other workers*. Some of those reasonable steps are set out below in items 1 to 3. In each case, the following three factors below (A to C) will affect what must be done:

A. the employer's degree of control,

B. the employer's level of expertise in the work being performed, and

C. the extent to which the employer is aware or ought to be aware of what is occurring in the workplace.

These reasonable steps for the employer include the following:

1. Making reasonable inquiries prior to a firm doing work on the employer's behalf;

   (a) The employer's expertise in the area may affect the extent of inquiries:

      (i) to determine whether the firm is capable of safely doing the work; and

      (ii) about the firm's plans to safely conduct the work.

2. Preventing unsafe conditions or work that may affect the other workers and addressing those that arise; and

   (a) The extent to which the employer is aware or ought to be aware of the unsafe conditions or work may affect what must be done.

   *The employer's familiarity with the worksite may affect the ability to identify unsafe conditions or work.*

   (b) The employer's level of expertise may affect the ability to identify the unsafe conditions or work.

   *For example, a roofing firm subcontracting to another, will have a good understanding of when fall protection is required. A manufacturing employer that engages a roofing contractor to service its plant may not.*

(c) The employer's degree of control over the other workers or the site, may affect:

(i) the processes implemented to address safety compliance; and

*Where the employer exercises a high degree of control relating to a particular function or activity, the employer will have a higher level of responsibility relating to that activity. This could include stopping the work, if necessary.*

(ii) the employer's response to unsafe conditions or work.

*Where there is no control, the duty may be satisfied by reporting the situation to a supervisor of the other workers.*

*As with item (i) above, where the employer exercises a high degree of control relating to a particular function or activity, the employer will have a higher level of responsibility relating to that activity. This could include stopping the work, if necessary.*

3. Ensuring that the employer's workers do not put the other workers at risk.

*The employer must address any aspects of the employer's work that could create a hazard for other workers. This would include workers coming on to the site after the work day. For example, security guards patrolling in the evening risk injury if hazards are left at the end of the work day.*

## PRACTICE

The following scenarios provide basic examples of the application of the policy for illustration purposes. More than one scenario may apply to some cases.

The scenarios are not policy. Where they conflict with the policy or are less comprehensive than the policy, the policy should be relied upon.

### Scenarios

(1) An employer brings in a sub-contractor to the employer's fixed workplace.

*In this case, the employer will generally have greater awareness of the site hazards, physical control over the site and the ability to affect all employers in the workplace. The employer will have contractual control over the subcontractor as well as physical control over the worksite.*

- The employer must make reasonable inquiries to determine that the subcontractor is able to safely perform the work.
    - This could involve questions for the subcontractor as well as checking references.
- The employer must make reasonable inquiries about the subcontractor's plan to safely conduct the work.
    - This would involve questions for the subcontractor, the extent of which would depend on the employer's level of expertise in the type of work performed by the subcontractor.
- The employer must provide information about hazards and preserve and maintain the safety of the workplace (see also section 119 of the *Act*.
- The employer must ensure that its activities do not endanger the *other workers*, including workers who may be involved in work after hours or following completion of the employer's work.
- Where these are known to the employer, unsafe acts by *other workers* must be reported to their supervisor (see also OSHR 3.10).
- The employer must exercise its authority to stop work by the *other workers* in the case of significant hazards or where reports of unsafe acts or conditions are not being acted upon.

(2) An employer hires a subcontractor to do work at a third party's workplace, where a third party maintains overall control of the workplace. The employer is not given any level of authority over the workplace.

*In this case, the employer will have the same responsibilities over the subcontractor as in scenario (1) with the exception that the employer will not have control over physical aspects of the workplace.*

(3) An employer has control over the subcontractor and the workplace but is not on site or only briefly attending the workplace.

*In this case, the employer will have the same responsibilities over the subcontractor as in scenario (1), however, the employer will have less awareness of what is occurring at the workplace.*

(4) An employer is a franchisor.

- The employer's responsibility will depend on the degree of control it exercises over the franchisee's operation and facilities, the extent of awareness and degree of expertise it has about the operations.

- When the employer exercises significant control over the franchisee's facility in a manner that affects health and safety, the employer will have a greater obligation to take steps to protect the *other workers*.

(5) An employer is present at a workplace but does not have control over other employers or over the workplace. (For example, the employer's workers work along with *other workers* at a shared site owned and controlled by a third party.)

- The employer's activities must not endanger *other workers*.

- Where these are known to the employer, unsafe acts by *other workers* must be reported to their supervisor (see also OSHR 3.10).

- Unsafe acts or conditions which are not remedied after an initial report must be pursued through the workplace hierarchy or reported to WorkSafeBC.

# APPENDIX

## 1. Additional Act and OHSR Provisions

### *Section 107, Act - Purposes of Part 3*

(1) The purpose of this Part is to benefit all citizens of British Columbia by promoting occupational health and safety and protecting workers and other persons present at workplaces from work related risks to their health and safety.

(2) Without limiting subsection (1), the specific purposes of this Part are

(a) to promote a culture of commitment on the part of employers and workers to a high standard of occupational health and safety,

(b) to prevent work related accidents, injuries and illnesses,

(c) to encourage the education of employers, workers and others regarding occupational health and safety,

(d) to ensure an occupational environment that provides for the health and safety of workers and others,

(e) to ensure that employers, workers and others who are in a position to affect the occupational health and safety of workers share that responsibility to the extent of each party's authority and ability to do so,

(f) to foster cooperative and consultative relationships between employers, workers and others regarding occupational health and safety, and to promote worker participation in occupational health and safety programs and occupational health and safety processes, and

(g) to minimize the social and economic costs of work related accidents, injuries and illnesses, in order to enhance the quality of life for British Columbians and the competitiveness of British Columbia in the Canadian and world economies.

***Section 115, Act - General duties of employers***

(1) Every employer must

(a) ensure the health and safety of

(i) all workers working for that employer, and

(ii) any other workers present at a workplace at which that employer's work is being carried out, and

(b) comply with this Part, the regulations and any applicable orders.

(2) Without limiting subsection (1), an employer must

(a) remedy any workplace conditions that are hazardous to the health or safety of the employer's workers,

(b) ensure that the employer's workers

(i) are made aware of all known or reasonably foreseeable health or safety hazards to which they are likely to be exposed by their work,

(ii) comply with this Part, the regulations and any applicable orders, and

(iii) are made aware of their rights and duties under this Part and the regulations,

(c) establish occupational health and safety policies and programs in accordance with the regulations,

(d) provide and maintain in good condition protective equipment, devices and clothing as required by regulation and ensure that these are used by the employer's workers,

(e) provide to the employer's workers the information, instruction, training and supervision necessary to ensure the health and safety of those workers in carrying out their work and to ensure the health and safety of other workers at the workplace,

(f) make a copy of this Act and the regulations readily available for review by the employer's workers and, at each workplace where workers of the employer are regularly employed, post and keep posted a notice advising where the copy is available for review,

(g) consult and cooperate with the joint committees and worker health and safety representatives for workplaces of the employer, and

(h) cooperate with the Board, officers of the Board and any other person carrying out a duty under this Part or the regulations.

***Section 124, Act – Responsibility when obligations apply to more than one person***

If

(a) one or more provisions of this Part or the regulations impose the same obligation on more than one person, and

(b) one of the persons subject to the obligation complies with the applicable provision,

the other persons subject to the obligation are relieved of that obligation only during the time when

(c) simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense, and

(d) the health and safety of persons at the workplace is not put at risk by compliance by only one person.

**Section 3.10, OHSR – Reporting unsafe conditions**

Whenever a person observes what appears to be an unsafe or harmful condition or act the person must report it as soon as possible to a supervisor or to the employer, and the person receiving the report must investigate the reported unsafe condition or act and must ensure that any necessary corrective action is taken without delay.

**EFFECTIVE DATE:** May 1, 2013
**AUTHORITY:** s. 115(1)(a)(ii), *Workers Compensation Act*
**CROSS REFERENCES:** Section 107, 124, *Workers Compensation Act*
Section 3.10, *Occupational Health and Safety Regulation*

**HISTORY:**
**APPLICATION:**

**RE: Employer Duties - Workplace Bullying and Harassment D3-115-2**

# BACKGROUND

## 1. Preamble

An employer has a duty to ensure the health and safety of its workers, and as a result, employers must take all reasonable steps to prevent where possible, or otherwise minimize, workplace bullying and harassment. Workplace bullying and harassment can lead to injury, illness or death.

This policy provides a consistent legal framework for stakeholders, WorkSafeBC Officers and decision-makers identifying what WorkSafeBC considers to be reasonable steps for an employer to prevent where possible, or otherwise minimize, workplace bullying and harassment.

WorkSafeBC Officers will review whether the elements in this policy have been developed, implemented and periodically reviewed.

## 2. Explanatory Notes

Section 115(1)(a) of the *Workers Compensation Act* ("*Act")* requires an employer to take all reasonable steps in the circumstances to ensure the health and safety of its workers.

Section 115(2)(e) of the *Act* requires an employer to inform, instruct, train and supervise workers to ensure their safety and that of other workers.

This policy (D3-115-2), which flows from the above sections in the *Act*, discusses employer duties regarding bullying and harassment. It identifies what WorkSafeBC considers to be reasonable steps for an employer to take to address the hazards of workplace bullying and harassment.

There are two other related policies that address workplace bullying and harassment: Policy D3-116-1, Worker duties, and Policy D3-117-2, Supervisor duties.

### 3. The Act

Section 115(1)(a) & Section 115(2)(e):

(1) Every employer must

(a) ensure the health and safety of

(i) all workers working for that employer, and

(ii) any other workers present at a workplace at which that employer's work is being carried out….

(2) Without limiting subsection (1), an employer must

(e) provide to the employer's workers the information, instruction, training and supervision necessary to ensure the health and safety of those workers in carrying out their work….

## POLICY

### Definition

| | |
|---|---|
| *"bullying and harassment"* | (a) includes any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated, but<br>(b) excludes any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment. |

### Reasonable Steps to Address the Hazard

WorkSafeBC considers that reasonable steps by an employer to prevent where possible, or otherwise minimize, workplace bullying and harassment include the following:

(a) developing a policy statement with respect to workplace bullying and harassment not being acceptable or tolerated;

(b) taking steps to prevent where possible, or otherwise minimize, workplace bullying and harassment;

(c) developing and implementing procedures for workers to report incidents or complaints of workplace bullying and harassment including how, when and

to whom a worker should report incidents or complaints. Included must be procedures for a worker to report if the employer, supervisor or person acting on behalf of the employer, is the alleged bully and harasser;

(d) developing and implementing procedures for how the employer will deal with incidents or complaints of workplace bullying and harassment including:

i. how and when investigations will be conducted;
ii. what will be included in the investigation;
iii. roles and responsibilities of employers, supervisors, workers and others;
iv. follow-up to the investigation (description of corrective actions, timeframe, dealing with adverse symptoms, etc.); and
v. record keeping requirements;

(e) informing workers of the policy statement in (a) and the steps taken in (b);

(f) training supervisors and workers on:

i. recognizing the potential for bullying and harassment;
ii. responding to bullying and harassment; and
iii. procedures for reporting, and how the employer will deal with incidents or complaints of bullying and harassment in (c) and (d) respectively;

(g) annually reviewing (a), (b), (c), and (d);

(h) not engaging in bullying and harassment of workers and supervisors; and

(i) applying and complying with the employer's policies and procedures on bullying and harassment.

## PRACTICE

The definition of bullying and harassment includes any inappropriate conduct or comment by a 'person' towards a worker that the 'person' knew or reasonably ought to have known would cause that worker to be humiliated or intimidated.

A 'person' includes any individual, whether or not they are a workplace party. This means that a 'person' could be a workplace party such as an employer, supervisor, or co-worker, or a non workplace party such as a member of the public, a client, or anyone a worker comes into contact with at the workplace.

In order to determine what is reasonable in the policy, a definition below is included for a 'reasonable person'.

*Black's Law Dictionary, Ninth Edition,* defines a reasonable person as follows:

> "…a person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others' interests. The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions…"

---

**EFFECTIVE DATE:** November 1, 2013
**AUTHORITY:** s. 115(1)(a) and s. 115(2)(e), *Workers Compensation Act*
**CROSS REFERENCES:**

**HISTORY:**
**APPLICATION:**

**RE: Employer Duties – Wood Dust Mitigation and Control** **D3-115-3**

# BACKGROUND

## 1. Preamble

An employer has a duty to ensure the health and safety of its workers, and therefore must take all reasonable steps to address the hazards of combustible wood dust.

Combustible dusts are fine particles that present explosion hazards when suspended in air under certain conditions. Combustible wood dust has resulted in catastrophic explosions with loss of life and serious injuries.

This policy provides a consistent legal framework for stakeholders, WorkSafeBC officers, and decision-makers identifying what WorkSafeBC considers reasonable steps for an employer to take to address these hazards.

Controlling combustible wood dust hazards requires a systematic long term approach contained in a program, including audits that can provide an objective and comprehensive evaluation of a facility's wood dust management practices and their effectiveness.

## 2. Explanatory Notes

Section 115(1)(a) of the *Workers Compensation Act* ("*Act")* requires an employer to take all reasonable steps in the circumstances to ensure the health and safety of workers. In addition, the *Act* and Occupational Health and Safety Regulation ("Regulation") also require an employer to:

- remedy any workplace conditions that are hazardous to the health or safety of workers (section 115(2)(a) of the *Act*)
- inform, instruct, train and supervise workers to ensure their safety and that of other workers (section 115(2)(e) of the *Act).*
- safely remove combustible dust before accumulation of the dust could cause a fire or explosion (section 5.81 of the Regulation).
- regularly inspect the workplace at intervals that will prevent the development of unsafe working conditions, and following an accident or equipment malfunction (sections 3.5 and 3.7 of the Regulation).
- investigate all reports of unsafe conditions or acts and ensure that necessary corrective action is taken immediately (section 3.10 of the Regulation).

This policy (D3-115-3) flows from the above sections of the *Act* and Regulation and addresses employer duties regarding wood dust mitigation and control. To be duly diligent with respect to combustible dust obligations, an employer must take all reasonable steps to comply with the *Act* and Regulation. This policy identifies what WorkSafeBC considers these reasonable steps to be.

This policy will initially apply to wood product manufacturers in eight specified classification units. WorkSafeBC assigns employers to classification units based on an employer's primary business activity.

Two other related policies address wood dust mitigation and control: D3-116-2, Worker duties; and D3-117-3, Supervisor duties.

## 3. Legal Authority

Sections 115(1)(a), 115(2)(a), and 115(2)(e), *Act*:

> (1) Every employer must
>
> (a) ensure the health and safety of
>
> (i) all workers working for that employer, and
>
> (ii) any other workers present at a workplace at which that employer's work is being carried out….
>
> (2) Without limiting subsection (1), an employer must
>
> (a) remedy any workplace conditions that are hazardous to the health or safety of the employer's workers....
>
> (e) provide to the employer's workers the information, instruction, training and supervision necessary to ensure the health and safety of those workers in carrying out their work….

Section 3.5, Regulation:

> Every employer must ensure that regular inspections are made of all workplaces, including buildings, structures, grounds, excavations, tools, equipment, machinery and work methods and practices, at intervals that will prevent the development of unsafe working conditions.

Section 3.7, Regulation:

> A special inspection must be made when required by malfunction or accident.

Section 3.10, Regulation:

> Whenever a person observes what appears to be an unsafe or harmful condition or act the person must report it as soon as possible to a supervisor or to the employer, and the person receiving the report must investigate the reported unsafe condition or act and must ensure that any necessary corrective action is taken without delay.

Section 5.81, Regulation:

> If combustible dust collects in a building or structure or on machinery or equipment, it must be safely removed before accumulation of the dust could cause a fire or explosion.

# POLICY

## Application

This policy applies to employers within the following classification units:

| Classification Unit Name | Classification Unit # |
|---|---|
| Sawmill | 714022 |
| Oriented Strand Board Manufacture | 714012 |
| Planing Mill | 714015 |
| Pressed Board Manufacture (not elsewhere specified) [includes pellet plants] | 714019 |
| Pulp and Paper Mill | 714044 |
| Shake and Shingle Mill | 714023 |
| Veneer or Plywood Manufacture | 714027 |
| Wooden Component Manufacture (not elsewhere specified) | 714032 |

## Reasonable Steps to Address the Hazard

WorkSafeBC considers that reasonable steps by an employer to address the hazards of combustible wood dust include the following:

(a) conducting a risk assessment to identify combustible wood dust hazards at the workplace;

(b) developing and implementing a combustible wood dust management program to effectively address combustible wood dust hazards;

(c) educating and training workers and supervisors about the hazards and measures in the combustible wood dust management program to control the hazards;

(d) ensuring that the combustible wood dust management program is fully implemented;

(e) undergoing a wood dust mitigation and control audit as soon as reasonably possible after implementing the program, then

  (i) promptly implementing recommendations from the audit, and

  (ii) conducting a new audit if there is any material change to work processes or equipment;

(f) reviewing the combustible wood dust management program

(i) annually, and

(ii) simultaneously with any material changes to work processes or equipment to ensure that these changes are addressed; and

(g) complying with the employer's combustible wood dust management program.

## PRACTICE

WorkSafeBC Guideline G5.81 and the *Mitigation and Control of Combustible Wood Dust Resource Tool Box* provide more detailed information and guidance regarding implementation of a wood dust mitigation and control program. The toolbox contains a comprehensive audit tool which can be used for a program audit and can also provide guidance to an employer developing a program

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| **EFFECTIVE DATE:** | September 1, 2014 |
| **AUTHORITY:** | s. 115(1)(a), s. 115(2)(a) and s. 115(2)(e), *Workers Compensation Act* ss. 5.81, 3.5, 3.7, and 3.10, Occupational Health and Safety Regulation |
| **CROSS REFERENCES:** | D3-116-2 (Worker Duties – Wood Dust Mitigation and Control), D3-117-3 (Supervisor Duties – Wood Dust Mitigation and Control) |
| **HISTORY:** | |
| **APPLICATION:** | |

**RE: Worker Duties - Workplace Bullying and Harassment** **D3-116-1**

# BACKGROUND

## 1. Preamble

A worker has a duty to take reasonable care to protect the health and safety of themselves and other persons, and as a result, a worker must take all reasonable steps to prevent where possible, or otherwise minimize, workplace bullying and harassment. Workplace bullying and harassment can lead to injury, illness or death.

This policy provides a consistent legal framework for stakeholders, WorkSafeBC Officers and decision-makers identifying what WorkSafeBC considers to be reasonable steps for a worker to prevent where possible, or otherwise minimize, workplace bullying and harassment.

## 2. Explanatory Notes

Section 116(1)(a) of the *Workers Compensation Act* (*"Act")* requires workers to take reasonable care to protect the health and safety of other persons who may be affected by the worker's acts or omissions at work.

This policy (D3-116-1), which flows from the above section in the *Act*, discusses worker duties regarding bullying and harassment.

There are two other related policies that address workplace bullying and harassment: Policy D3-115-2, Employer duties, and Policy D3-117-2, Supervisor duties.

## 3. The Act

Section 116

(1) Every worker must

(a) take reasonable care to protect the worker's health and safety and the health and safety of other persons who may be affected by the worker's acts or omissions at work….

# POLICY

**Definition**

| | |
|---|---|
| *"bullying and harassment"* | (a) includes any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated, but |
| | (b) excludes any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment. |

A worker's obligation to take reasonable care to protect the health and safety of themselves or others includes:

(a) not engaging in bullying and harassment of other workers, supervisors, the employer or persons acting on behalf of the employer;
(b) reporting if bullying and harassment is observed or experienced in the workplace; and
(c) applying and complying with the employer's policies and procedures on bullying and harassment.

# PRACTICE

The definition of bullying and harassment includes any inappropriate conduct or comment by a 'person' towards a worker that the 'person' knew or reasonably ought to have known would cause that worker to be humiliated or intimidated.

A 'person' includes any individual, whether or not they are a workplace party. This means that a 'person' could be a workplace party such as an employer, supervisor, or co-worker, or a non workplace party such as a member of the public, a client, or anyone a worker comes into contact with at the workplace.

*Black's Law Dictionary, Ninth Edition,* defines a reasonable person as follows:

> "…a person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others' interests. The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions…"

**EFFECTIVE DATE:** November 1, 2013
**AUTHORITY:** s. 116(1)(a), *Workers Compensation Act*
**CROSS REFERENCES:**

**HISTORY:**
**APPLICATION:**

**RE: Worker Duties - Wood Dust Mitigation and Control** **D3-116-2**

# BACKGROUND

## 1. Preamble

A worker has a duty to take reasonable care to protect the health and safety of themselves and other persons, and as a result, a worker has duties with regard to the hazards of combustible wood dust.

Combustible dusts are fine particles that present an explosion hazard when suspended in air under certain conditions. Combustible wood dust has resulted in catastrophic explosions with loss of life and serious injuries.

This policy provides a consistent legal framework for stakeholders, WorkSafeBC officers, and decision-makers identifying what WorkSafeBC considers reasonable steps for a worker to meet his or her duties with respect to these hazards.

## 2. Explanatory Notes

Section 116(1)(a) of the *Workers Compensation Act* ("*Act*") requires workers to take reasonable care to protect the health and safety of other persons who may be affected by the worker's acts or omissions at work.

Section 3.10 of the Occupational Health and Safety Regulation ("Regulation") requires a person who sees an unsafe condition or act to report it as soon as possible to a supervisor or to the employer.

This policy (D3-116-2) flows from the above sections of the *Act* and Regulation and addresses worker duties regarding combustible wood dust.

Two other related policies address combustible wood dust: D3-115-3, Employer duties; and D3-117-3, Supervisor duties.

## 3. Legal Authority

Section 116, *Act:*

(1) Every worker must

(a) take reasonable care to protect the worker's health and safety and the health and safety of other persons who may be affected by the worker's acts or omissions at work….

Section 3.10, Regulation:

> Whenever a person observes what appears to be an unsafe or harmful condition or act the person must report it as soon as possible to a supervisor or to the employer, and the person receiving the report must investigate the reported unsafe condition or act and must ensure that any necessary corrective action is taken without delay.

## POLICY

A worker's obligation to take reasonable care to protect the health and safety of themselves or others includes:

(a) reporting unsafe conditions or actions relating to combustible wood dust in the workplace to a supervisor, or to the employer, as soon as possible; and

(b) complying with the employer's combustible wood dust management program.

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**EFFECTIVE DATE:** September 1, 2014
**AUTHORITY:** s. 116(1)(a), *Workers Compensation Act*
s. 3.10, Occupational Health and Safety Regulation
**CROSS REFERENCES:** D3-115-3 (Employer Duties – Wood Dust Mitigation and Control),
D3-117-3 (Supervisor Duties – Wood Dust Mitigation and Control)
**HISTORY:**
**APPLICATION:**

**RE: General Duties – Supervisors** **ITEM: D3-117-1**

# BACKGROUND

## 1. Explanatory Notes

Section 117 sets out the general duties of supervisors under Part 3.

## 2. The Act

Section 117(1):

> Every supervisor must
>
> (a) ensure the health and safety of all workers under the direct supervision of the supervisor,
>
> (b) be knowledgeable about this Part and those regulations applicable to the work being supervised, and
>
> (c) comply with this Part, the regulations and any applicable orders.

Section 117(2):

> Without limiting subsection (1), a supervisor must
>
> (a) ensure that the workers under his or her direct supervision
>
> (i) are made aware of all known or reasonably foreseeable health or safety hazards in the area where they work, and
>
> (ii) comply with this Part, the regulations and any applicable orders,
>
> (b) consult and cooperate with the joint committee or worker health and safety representative for the workplace, and
>
> (c) cooperate with the board, officers of the board and any other person carrying out a duty under this Part or the regulations.

# POLICY

In determining whether Section 117 applies, the following guidelines will be considered:

- A supervisor is a person who instructs, directs and controls workers in the performance of their duties.

- A supervisor need not have the title "supervisor". He or she may have some other title or have no title at all.

- The supervisor will normally be appointed by an employer as such, but a person may be a supervisor without being specifically appointed by an employer if, as a matter of fact, he or she instructs, directs and controls workers in the performance of their duties. The employer himself or herself may be a supervisor.

- "Direct supervision" may take place even though a worker may be located in a different place than the supervisor or may travel to different places as part of his or her work. Directions may be given by any communications medium.

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| **EFFECTIVE DATE:** | October 1, 1999 |
| **AUTHORITY:** | s.117, *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also Multiple-Employer Workplaces (Item D3-118-1), Owners (Item D3-119-1), Directors and Officers (Item D3-121-1), Overlapping Obligations (D3-123/124-1) |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes. |
| **APPLICATION:** | |

**RE:Supervisor Duties - Workplace Bullying and Harassment** **D3-117-2**

# BACKGROUND

## 1. Preamble

A supervisor has a duty to take all reasonable steps to ensure the health and safety of workers under their supervision, and as a result, a supervisor must take all reasonable steps to prevent where possible, or otherwise minimize, workplace bullying and harassment. Workplace bullying and harassment can lead to injury, illness or death.

This policy provides a consistent legal framework for stakeholders, WorkSafeBC Officers and decision-makers identifying what WorkSafeBC considers to be reasonable steps for a supervisor to prevent where possible, or otherwise minimize, workplace bullying and harassment.

## 2. Explanatory Notes

Section 117(1)(a) of the *Workers Compensation Act* ("*Act")* requires supervisors to take all reasonable steps to ensure the health and safety of workers under their supervision.

This policy (D3-117-2), which flows from the above section in the *Act*, discusses supervisor duties regarding bullying and harassment.

There are two other related policies that address workplace bullying and harassment: Policy D3-115-2, Employer duties, and Policy D3-116-1, Worker duties.

## 3. The Act

Section 117

(1) Every supervisor must

(a) ensure the health and safety of all workers under the direct supervision of the supervisor….

# POLICY

**Definition**

| | |
|---|---|
| *"bullying and harassment"* | (a) includes any inappropriate conduct or comment by a person towards a worker that the person knew or reasonably ought to have known would cause that worker to be humiliated or intimidated, but |
| | (b) excludes any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment. |

A supervisor's obligation to ensure health and safety of workers includes:

(a) not engaging in bullying and harassment of workers, other supervisors, the employer or persons acting on behalf of the employer; and
(b) applying and complying with the employer's policies and procedures on bullying and harassment.

# PRACTICE

The definition of bullying and harassment includes any inappropriate conduct or comment by a 'person' towards a worker that the 'person' knew or reasonably ought to have known would cause that worker to be humiliated or intimidated.

A 'person' includes any individual, whether or not they are a workplace party. This means that a 'person' could be a workplace party such as an employer, supervisor, or co-worker, or a non workplace party such as a member of the public, a client, or anyone a worker comes into contact with at the workplace.

*Black's Law Dictionary, Ninth Edition*, defines a reasonable person as follows:

> "…a person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others' interests. The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions…"

**EFFECTIVE DATE:** November 1, 2013
**AUTHORITY:** s. 117(1)(a), *Workers Compensation Act*
**CROSS REFERENCES:**

**HISTORY:**
**APPLICATION:**

**RE: Supervisor Duties – Wood Dust Mitigation and Control** **D3-117-3**

# BACKGROUND

## 1. Preamble

A supervisor has a duty to take all reasonable steps to ensure the health and safety of workers under their supervision, and as a result, a supervisor has duties with regard to the hazards of combustible wood dust.

Combustible dusts are fine particles that present an explosion hazard when suspended in air under certain conditions. Combustible wood dust has resulted in catastrophic explosions with loss of life and serious injuries.

This policy provides a consistent legal framework for stakeholders, WorkSafeBC officers, and decision-makers identifying what WorkSafeBC considers reasonable steps for a supervisor to meet his or her duties with respect to these hazards.

## 2. Explanatory Notes

Section 117(1)(a) of the *Workers Compensation Act* ("*Act")* requires supervisors to take all reasonable steps to ensure the health and safety of workers under their supervision.

Section 3.10 of the Occupational Health and Safety Regulation ("Regulation") requires a supervisor who receives a report of an unsafe condition or act to investigate and ensure that necessary corrective action is taken immediately.

This policy (D3-117-3), flows from the above sections of the *Act* and Regulation and addresses supervisor duties regarding combustible wood dust.

Two other related policies address combustible wood dust: D3-115-3, Employer duties; and D3-116-2, Worker duties.

## 3. Legal Authority

Section 117, *Act:*

(1) Every supervisor must

(a) ensure the health and safety of all workers under the direct supervision of the supervisor….

Section 3.9, Regulation

> Unsafe or harmful conditions found in the course of an inspection must be remedied without delay.

Section 3.10, Regulation:

> Whenever a person observes what appears to be an unsafe or harmful condition or act the person must report it as soon as possible to a supervisor or to the employer, and the person receiving the report must investigate the reported unsafe condition or act and must ensure that any necessary corrective action is taken without delay.

## POLICY

In addition to a supervisor's duties as a worker or employer, a supervisor's obligation to ensure the health and safety of workers includes:

(a) investigating any reports received by the supervisor or inspection results identifying an unsafe condition or act relating to combustible wood dust and ensuring that necessary corrective action is taken immediately; and

(b) complying with the employer's combustible wood dust management program.

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| **EFFECTIVE DATE:** | September 1, 2014 |
| **AUTHORITY:** | s. 117(1)(a), *Workers Compensation Act*<br>ss. 3.9, 3.10, Occupational Health and Safety Regulation |
| **CROSS REFERENCES:** | D3-115-3 (Employer Duties – Wood Dust Mitigation and Control),<br>D3-116-2 (Worker Duties – Wood Dust Mitigation and Control) |
| **HISTORY:** | |
| **APPLICATION:** | |

**RE: General Duties – Multiple-Employer Workplaces** **ITEM: D3-118-1**

# BACKGROUND

## 1. Explanatory Notes

Section 118 sets out responsibilities at a “multiple employer workplace”. It provides that the “prime contractor” is responsible for the coordination of activities at these workplaces and defines “prime contractor” for this purpose.

## 2. The Act

Section 118(1):

In this section:

**"multiple-employer workplace"** means a workplace where workers of 2 or more employers are working at the same time;

**"prime contractor"** means, in relation to a multiple-employer workplace,

(a) the directing contractor, employer or other person who enters into a written agreement with the owner of that workplace to be the prime contractor for the purposes of this Part, or

(b) if there is no agreement referred to in paragraph (a), the owner of the workplace.

Section 118(2):

The prime contractor of a multiple-employer workplace must

(a) ensure that the activities of employers, workers and other persons at the workplace relating to occupational health and safety are coordinated, and

(b) do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with this Part and the regulations in respect of the workplace.

Section 118(3):

> Each employer of workers at a multiple-employer workplace must give to the prime contractor the name of the person the employer has designated to supervise the employer's workers at that workplace.

## POLICY

For sake of clarity, the following apply in determining whether there is a “multiple-employer workplace” under section 118:

- Two or more adjacent workplaces do not constitute a "multiple-employer workplace", even though the activities at one workplace might affect the health and safety of workers at an adjacent workplace.

- It does not matter whether:

    - workers of different employers are present at the same time working on different projects; or

    - workers of different employers are present at the same time working on the same project.

  In both cases, the workplace will generally be a “multiple-employer workplace”.

- In determining whether “workers of 2 or more employers are working at the same time”, the phrase “at the same time” will be given such fair, large and liberal construction as may best attain the objectives of section 118. “At the same time” does not mean that, at any precise point in time, there are workers of 2 or more employers present in the workplace. Rather, it means that, over an appropriate interval, there are workers of 2 or more employers present in the workplace, whether or not the 2 or more groups of workers are actually present together in the workplace at any precise point in time at all. The duration of the interval of time to be considered will depend upon the circumstances of the individual workplace.

- Whether the workers of the one employer come into actual contact with the workers of the other employer does not generally affect the determination of whether the workplace is a “multiple-employer workplace”. An employer, the employer’s workers and their activities could well affect the health and safety of another employer’s workers who come into the workplace later in the day or on another day, even though there may be no actual contact between the two groups of workers.

However, the degree to which the activities of the first employer and its workers affect the health and safety of the second employer's workers will generally affect the determination of the responsibilities of the prime contractor and of the two employers under Part 3 and the regulations.

- Virtually all workplaces will be visited by workers of other employers. For example, workers may deliver or pick up mail, goods or materials or enter to inspect the premises. Short term visits of this type, even if regular, do not make the workplace a "multiple-employer workplace" for purposes of section 118(1).

The written agreement referred to in section 118(1) must be made available within a reasonable time if requested by a Board officer.

There can be only one "prime contractor" at a workplace at any point in time. If an owner enters into more than one agreement purporting to create a "prime contractor" for the same period of time, the owner is considered to be the prime contractor.

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| **EFFECTIVE DATE:** | October 1, 1999 |
| **AUTHORITY:** | s.118, *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also Supervisors (Item D3-117-1), Owners (Item D3-119-1), Directors and Officers (Item D3-121-1), Overlapping Obligations (D3-123/124-1) |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes. |
| **APPLICATION:** | |

**RE: General Duties – Owners** **ITEM: D3-119-1**

# BACKGROUND

## 1. Explanatory Notes

Section 119 of the *Act* sets out the general duties of owners under Part 3 of the *Act*. This policy clarifies when these duties apply, and which owner(s) will be responsible for compliance, in multiple owner situations.

## 2. The Act

Section 106:

> "owner" includes
>
> (a) a trustee, receiver, mortgagee in possession, tenant, lessee, licensee or occupier of any lands or premises used or to be used as a workplace, and
>
> (b) a person who acts for or on behalf of an owner as an agent or delegate.

Section 119:

> Every owner of a workplace must
>
> (a) provide and maintain the owner's land and premises that are being used as a workplace in a manner that ensures the health and safety of persons at or near the workplace,
>
> (b) give to the employer or prime contractor at the workplace the information known to the owner that is necessary to identify and eliminate or control hazards to the health or safety of persons at the workplace, and
>
> (c) comply with this Part, the regulations and any applicable orders.

# POLICY

The purpose of this policy is to ensure that owners understand and fulfill their responsibilities under section 119 of the *Act*, especially in multiple owner situations. The term "owner" is defined broadly under the *Act* to include several parties such as the person who holds the legal title to land or premises, a mortgagee in possession, a

tenant, a lessee, a licensee, a trustee, and any other occupier of lands or premises used or to be used as a workplace.

Accordingly, more than one person may simultaneously meet the definition of the term "owner" in respect of a particular workplace. For example, both the entity that holds legal title to land and the entity that leases it for business purposes would qualify as owners under the *Act*. In such circumstances, referred to as multiple owner situations, all the owners of a particular workplace are responsible for fulfilling the duties set out in section 119 of the *Act*, the regulations, and any applicable orders, subject to the Limited Exemption under section 124 of the *Act*.

When the duties set out in section 119 of the *Act* have not been met by a party or parties, and the Limited Exemption does not apply, Board officers will determine which owner(s) should be held responsible for the violation. In making this determination, Board officers will consider who had or should have had knowledge of, and control over, the particular workplace. To assist in this consideration, a non-exhaustive list of factors is set out below. When these factors are present, an owner will likely be held responsible for or have to address an issue.

**Category 1: Knowledge**

1. The owner knew or should have known that:

   (a) persons would be at or near the land and premises that were being used as a workplace, and

   (b) the health and safety of such persons might be harmed by the condition or use of the workplace, and

   (c) the extent of the harm, if it occurred, would be more than minor or trivial.

**Category 2: Control**

2. The owner had some control or influence over the safety of the workplace in that the owner:

   (a) could practicably have taken measures necessary to eliminate or reduce either:

      (i) the risk of the potential harm, or

      (ii) the extent of the potential harm,

      to persons at or near the workplace; or

(b) possessed material information and either:

(i) failed to communicate all this information to the persons at or near the workplace and thus, prevented them from taking measures to protect themselves, or

(ii) communicated all this information to the persons at or near the workplace, but then unreasonably expected those persons to take the required precautions against a particular hazard.

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| **EFFECTIVE DATE:** | December 1, 2004 |
| **AUTHORITY:** | s.119, *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also sections 73(1) (Claims Cost Levy) and 111 (Board's mandate under this Part) of the *Act*; Part 3, Divisions 3 (General Duties of Employers, Workers and Others), 12 (Enforcement), and 15 (Offences) of the *Act*; Policies in the *Prevention Manual* in Divisions 3 (General Duties of Employers, Workers and Others), 12 (Enforcement). |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br>On December 1, 2004, provisions of the *Act* with respect to multiple owner situations were clarified, and the list of factors which Board officers consider before holding an owner responsible for a compliance issue were rewritten in a more directive manner. |
| **APPLICATION:** | To all situations in which an owner has responsibilities under section 119 of the *Act* on or after December 1, 2004. |

**RE: General Duties – Directors and Officers of a Corporation** **ITEM: D3-121-1**

# BACKGROUND

## 1. Explanatory Notes

Section 121 sets out the duties of directors and officers of a corporation. The provision should be read in conjunction with Section 213(2).

## 2. The Act

Section 121:

> Every director and every officer of a corporation must ensure that the corporation complies with this Part, the regulations and any applicable orders.

Section 213:

> (1) A person who contravenes a provision of this Part, the regulations or an order commits an offence.
>
> (2) If a corporation commits an offence referred to in subsection (1), an officer, director or agent of the corporation who authorizes, permits or acquiesces in the commission of the offence also commits an offence.
>
> (3) Subsection (2) applies whether or not the corporation is prosecuted for the offence.

# POLICY

The Board will not automatically issue an order to officers, directors or agents of a corporation each time an order is written to the corporation.

The Board will, however, issue orders to officers, directors or agents where there is evidence that they were responsible for the failure by the corporation. Being "responsible" includes authorizing, permitting or acquiescing in the failure.

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| **EFFECTIVE DATE:** | October 1, 1999 |
| **AUTHORITY:** | ss.121 and 213, *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also Supervisors (Item D3-117-1), Multiple-Employer Workplaces (Item D3-118-1), Owners (Item D3-119-1), Overlapping Obligations (D3-123/124-1) |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes. |
| **APPLICATION:** | |

**RE: General Duties – Overlapping Obligations** **ITEM: D3-123/124-1**

# BACKGROUND

## 1. Explanatory Notes

Section 123 of the *Act* describes how persons may be subject to obligations in relation to more than one role. Section 124 of the *Act* explains what can happen when more than one person is responsible for fulfilling the same obligations. This policy provides guidance on when a party with obligations under the *Act* will be held responsible for a violation of these responsibilities despite the fact that one or more other parties share the same obligations.

## 2. The Act

Section 123:

(1) In this section, "function" means the function of employer, supplier, supervisor, owner, prime contractor or worker.

(2) If a person has 2 or more functions under this Part in respect of one workplace, the person must meet the obligations of each function.

Section 124:

If

(a) one or more provisions of this Part or the regulations impose the same obligation on more than one person, and

(b) one of the persons subject to the obligation complies with the applicable provision,

the other persons subject to the obligation are relieved of that obligation only during the time when

(c) simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense, and

(d) the health and safety of persons at the workplace is not put at risk by compliance by only one person.

## POLICY

The purpose of this policy is to ensure that all of the duties under the *Act* are effectively fulfilled despite the fact that multiple parties may share the same responsibilities.

All parties with duties under the *Act* may be able to affect the health and safety of persons at or near a workplace. Any and all of these parties may be cited for violations of their statutory duties regardless of whether or not another person has fulfilled his or her statutory responsibilities.

Under section 124 of the *Act,* one person may be relieved of his or her obligations under Part 3 of the *Act* or the regulations if:

- another person who is subject to the same obligations complies with those obligations, and
- simultaneous compliance by more than one person would result in unnecessary duplication of effort and expense, and
- the health and safety of persons at the workplace would not be put at risk by the compliance of only one person.

The first requirement of this Limited Exemption means that persons who have the same duty under the *Act* or regulations may agree amongst themselves as to who should perform it. The Board is neither bound by any agreements of this nature, nor by whether the terms of the agreement are complied with. The Board's primary concern is that the duty in question is fulfilled.

Further, even if the first requirement is satisfied, the Limited Exemption will only apply if the Board determines that the second and third requirements set out in section 124 are also satisfied. The third requirement of the Limited Exemption will not be met if performance of the occupational health and safety duty by one person leaves health and safety risks that would be eliminated by others performing their duty.

| | |
|---|---|
| **EFFECTIVE DATE:** | December 1, 2004 |
| **AUTHORITY:** | ss.123 and 124, *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also sections 73(1) (Claims Cost Levy) and 111 (Board's mandate under this Part) of the *Act*; Part 3, Divisions 3 (General Duties of Employers, Workers and Others), 12 (Enforcement), and 15 (Offences) of the *Act*; Policies in the *Prevention Manual* in Divisions 3 (General Duties of Employers, Workers and Others), 12 (Enforcement). |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br>On December 1, 2004, provisions of the *Act* with respect to overlapping obligations were clarified. |
| **APPLICATION:** | To all situations in which more than one party shares the same obligations under Part 3 of the *Act* or the regulations on or after December 1, 2004. |

# DIVISION 4

# JOINT COMMITTEES AND WORKER REPRESENTATIVES

Division 4 of Part 3 of the *Workers Compensation Act* provides for the establishment and maintenance of joint health and safety committees in certain circumstances. It sets out committee membership requirements and selection criteria, duties and functions, procedures, members' entitlement to time off work and educational leave, and various employer obligations.

Division 4 also provides for the selection of a worker health and safety representative in certain other circumstances, the representative's duties and functions, the representative's entitlements and the employer's obligations to the representative.

**RE: Joint Committees – When a Committee is Required** **ITEM: D4-125-1**

# BACKGROUND

## 1. Explanatory Notes

Section 125 sets out the requirement for a joint committee in certain circumstances.

Section 127 sets out membership requirements.

## 2. The Act

Section 125:

An employer must establish and maintain a joint health and safety committee

(a) in each workplace where 20 or more workers of the employer are regularly employed, and

(b) in any other workplace for which a joint committee is required by order.

Section 127:

A joint committee for a workplace must be established in accordance with the following:

(a) it must have at least 4 members or, if a greater number of members is required by regulation, that greater number;

(b) it must consist of worker representatives and employer representatives;

(c) at least half the members must be worker representatives;

(d) it must have 2 co-chairs, one selected by the worker representatives and the other selected by the employer representatives.

# POLICY

A joint health and safety committee is an important prevention tool. People who work at a particular workplace and who are knowledgeable or trained in the operations of that workplace can make a positive contribution to preventing workplace injuries and illnesses.

Section 125 expands the requirement for joint committees significantly beyond what was required prior to the implementation of the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998*. In administering section 125, the Board will be mindful of the intent evidenced by this expansion.

## (a) Section 125(a)

Section 125(a) requires a joint health and safety committee "in each workplace where 20 or more workers of the employer are regularly employed". A workplace will fall within the terms of this provision if the employer has 20 or more workers who have been employed at the workplace for a period of not less than one month.

All workers are considered for this purpose regardless of how the employer or workers may define their status.

The 20 or more workers must be at one workplace before a committee is required under section 125(a). The fact that the employer may have 20 or more workers spread over several workplaces is not sufficient. However, the Board may order that a committee be established in such a case if warranted under the criteria set out below.

## (b) Section 125(b)

Before the Board may order the establishment of a committee under section 125(b), the Board must be satisfied that a committee is required to deal with common health and safety issues arising at the workplace. The Board must consider:

- the nature of the hazards at the workplace;
- the extent and effectiveness of the employer's occupational health and safety program;
- the availability of alternative ways of dealing with the health and safety issues arising at the workplace;

- whether a worker health and safety representative has been appointed;
- the number of workers at the workplace; and
- any other relevant circumstances.

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**EFFECTIVE DATE:** October 1, 1999
**AUTHORITY:** *s.125, Workers Compensation Act*
**CROSS REFERENCES:** See also Joint Committees - Worker Health and Safety Representatives (Item D4-139-1)
**HISTORY:** Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.
**APPLICATION:**

**RE: Procedures and Resolving Disagreements** **ITEM: D4-132/133-1**

# BACKGROUND

## 1. Explanatory Notes

A number of provisions in Division 4 provide the Board with discretion to resolve various disagreements. These provisions include:

- a dispute over the process for selecting worker representatives for the committee (s. 128);
- a dispute over joint committee rules of procedure, including rules respecting how it is to perform its duties and functions (ss.132 and 133);
- if a joint committee is unable to reach agreement on a matter relating to the health or safety of workers at the workplace (s.132);
- if the employer does not accept the joint committee's recommendations with respect to a particular matter (s.133(3)); and
- if the joint committee is not satisfied that the employer's explanation for a delay in responding to the committee's recommendations is reasonable in the circumstances (s.133(5)).

Policy is required as to when the Board will investigate a matter under these provisions.

## 2. The Act

Section 128:

(1) The worker representatives on a joint committee must be selected from workers at the workplace who do not exercise managerial functions at that workplace, as follows:

(a) if the workers are represented by one or more unions, the worker representatives are to be selected according to the procedures established or agreed on by the union or unions;

(b) if none of the workers are represented by a union, the worker representatives are to be elected by secret ballot;

(c) if some of the workers are represented by one or more unions and some are not represented by a union, the worker representatives are to be selected in accordance with paragraphs (a) and (b) in equitable proportion to their relative numbers and relative risks to health and safety;

(d) if the workers do not make their own selection after being given the opportunity under paragraphs (a) to (c), the employer must seek out and assign persons to act as worker representatives.

(2) The employer or a worker may request the board to provide direction as to how an election under subsection (1) (b) is to be conducted.

(3) The employer, or a union or a worker at a workplace referred to in subsection (1) (c), may request the board to provide direction as to how the requirements of that provision are to be applied in the workplace.

Section 131:

(1) Subject to this Part and the regulations, a joint committee must establish its own rules of procedure, including rules respecting how it is to perform its duties and functions.

(2) A joint committee must meet regularly at least once each month, unless another schedule is permitted or required by regulation or order.

Section 132:

(1) If a joint committee is unable to reach agreement on a matter relating to the health or safety of workers at the workplace, a co-chair of the committee may report this to the board, which may investigate the matter and attempt to resolve the matter.

(2) If the Board considers that a joint committee is unable to reach agreement on a matter relating to the health or safety of workers at the workplace, the Board, on its own initiative, may investigate the matter and attempt to resolve the matter.

Section 133:

(1) This section applies if a joint committee sends a written recommendation to an employer with a written request for a response from the employer.

(2) Subject to subsections (4) and (5), the employer must respond in writing to the committee within 21 days of receiving the request, either

(a) indicating acceptance of the recommendation, or

(b) giving the employer's reasons for not accepting the recommendation.

(3) If the employer does not accept the committee's recommendations, a co-chair of the committee may report the matter to the board, which may investigate and attempt to resolve the matter.

(4) If it is not reasonably possible to provide a response before the end of the 21 day period, the employer must provide within that time a written explanation for the delay, together with an indication of when the response will be provided.

(5) If the joint committee is not satisfied that the explanation provided under subsection (4) is reasonable in the circumstances, a co-chair of the committee may report this to the board, which may investigate the matter and may, by order, establish a deadline by which the employer must respond.

(6) Nothing in this section relieves an employer of the obligation to comply with this Part and the regulations.

## POLICY

In determining whether to investigate matters in order to resolve disagreements under Division 4, the Board will consider:

- the Board's statutory authority to investigate in the particular situation;
- whether there is an immediate hazard that needs to be resolved;
- whether the issue is significant in terms of preventing injuries and illnesses;
- whether there is an alternative method for resolving the issue; and
- whether the Board is likely to be able to resolve the issue.

Where the Board does investigate, the extent and nature of investigations will depend on the circumstances. Not all investigations will involve a visit to the workplace.

With regard to sections 132 and 133(3), the investigating officer will, where applicable, make relevant determinations as to whether the *Act* and regulations are being complied with or whether an unsafe situation exists. If the disagreement involves matters going beyond what is specifically required to comply with the regulations, the officer may

discuss the issue with the parties and suggest options but will not decide the disagreement.

If the employer fails to make any response at all or to meet a deadline set by the Board under section 133(5), the Board may order that a response be made under section 187 and/or take whatever other enforcement action may be appropriate.

Joint committees themselves have the authority to determine the constitution of the committee, to the extent that this is not covered by Part 3 or the regulations.

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| **EFFECTIVE DATE:** | October 1, 1999 |
| **AUTHORITY:** | ss.128, 131, 132 and 133; *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also Joint Committees – Time off Work (Item D4-134-1), Educational Leave (Item D4-135-1), Employer Must Post Committee Information (Item D4-138-1), Worker Health and Safety Representative (Item D4-139-1) |
| **HISTORY:** | Housekeeping changes to Background Section effective January 1, 2016 to reflect amendments to the *Workers Compensation Act*.<br>Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes. |
| **APPLICATION:** | |

**RE: Joint Committees – Time Off Work** **ITEM: D4-134-1**

# BACKGROUND

## 1. Explanatory Notes

Section 134 sets out the right of joint committee members to take time off from work for certain purposes and to be paid for that time.

## 2. The Act

Section 134:

(1) A member of a joint committee is entitled to time off from work for

(a) the time required to attend meetings of the committee, and

(b) other time that is reasonably necessary to prepare for meetings of the committee and to fulfill the other functions and duties of the committee.

(2) Time off under subsection (1) is deemed to be time worked for the employer, and the employer must pay the member for that time.

# POLICY

Members of joint health and safety committees are entitled to take time off from work for the purposes set out in section 134. What constitutes "reasonably necessary" time in section 134(1)(b) will depend on the circumstances including:

- the role of the member on the committee; and
- the health and safety conditions at the workplace.

If the employer is concerned about the amount of time spent on committee activities, the employer should raise this issue with the committee through its representatives.

If a member of the committee considers that the employer is not allowing the member the time to which he or she is entitled under section 134, the member may, after raising the matter with the committee and the employer, complain to the Board. The Board will investigate the matter. Depending upon its findings, the Board may:

- decide that no further action is appropriate;
- attempt to resolve the dispute; or
- make an order under section 187 requiring the employer to comply with section 134.

If the employer does not pay the worker's wages for time properly taken under section 134, a complaint can be made to the Board under section 152.

The employer has the right to manage the workplace and determine how much time workers spend on different activities. However, the employer's right is subject to the *Act* and the regulations. In dealing with matters covered by section 134, the employer must exercise the right in a manner consistent with the purpose and intent of section 134.

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| **EFFECTIVE DATE:** | October 1, 1999 |
| **AUTHORITY:** | s.134, *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also s. 154, *Workers Compensation Act*; Joint Committees – Procedures and Resolving Disagreements (Item D4-132/133-1) and Discriminatory Actions/Failure to Pay Wages – Scope (Item D6-150/151/152-1) |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes. |
| **APPLICATION:** | |

**RE: Joint Committees – Educational Leave** **ITEM: D4-135-1**

# BACKGROUND

## 1. Explanatory Notes

Section 135 provides for educational leave for members of joint committees. Section 135(3) requires the employer to provide the leave without loss of pay or other benefits.

## 2. The Act

Section 135:

(1) Each member of a joint committee is entitled to an annual educational leave totalling 8 hours, or a longer period if prescribed by regulation, for the purposes of attending occupational health and safety training courses conducted by or with the approval of the Board.

(2) A member of the joint committee may designate another member as being entitled to take all or part of the member's educational leave.

(3) The employer must provide the educational leave under this section without loss of pay or other benefits and must pay for, or reimburse the worker for, the costs of the training course and the reasonable costs of attending the course.

# POLICY

Members of joint health and safety committees are entitled to take time off from work to attend occupational health and safety training courses conducted by or with the approval of the Board.

Decisions as to when members will attend courses, what courses they will attend and at what time and place will normally be made as follows:

- An individual member will bring his or her request to the committee.
- If the committee agrees, the committee will forward the request to the employer.

- If the committee does not agree, or is unable to come to a decision within a reasonable time, the individual member may forward the request to the employer.

- Upon receiving a request from either the committee or the individual member, the employer will make its decision within a reasonable time. The employer will give reasons in writing where required by section 133. In making its decision, the employer must act in a manner consistent with the purpose and intent of section 135. Permission must not be unreasonably denied.

If a member of the committee considers that the employer is not allowing the member the leave to which he or she is entitled under section 135, the member may, after following the above process, complain to the Board. The Board will investigate the matter. Depending upon its findings, the Board may:

- decide that no further action is appropriate;

- attempt to resolve the dispute; or

- make an order under section 187 requiring the employer to comply with section 135.

If the employer does not pay a worker's wages for leave taken under section 135, a complaint can be made to the Board under section 152.

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| **EFFECTIVE DATE:** | July 1, 2003 |
| **AUTHORITY:** | s.135, *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also s. 152, *Workers Compensation Act*; Joint Committees – Procedures and Resolving Disagreements (Item D4-132/133-1), Discriminatory Actions/Failure to Pay Wages – Investigation of Complaint (Item D6-153-1) and Orders – General Authority (Item D12-187-1) |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br>Item developed to implement the *Workers Compensation (Occupational Health and Safety) Act, 1998,* effective October 1, 1999. Effective July 1, 2003 subsequent minor change made to correct an error in statutory citation; section 133(3) was removed and replaced with section 133. |
| **APPLICATION:** | |

**RE: Joint Committees – Worker Health and Safety Representative** **ITEM: D4-139-1**

# BACKGROUND

## 1. Explanatory Notes

Section 139 sets out the requirement for a worker health and safety representative in certain workplaces. With respect to section 139(4), the matters covered by sections 133 to 136 include:

- time off work under section 134 that is "reasonably necessary" to fulfill the representative's duties and functions;
- eight hours annual educational leave under section 135;
- the obligation of the employer to respond to recommendations under section 133, and for the representative to apply to the Board if the employer delays the response or rejects the recommendation; and
- the obligation of the employer to provide other administrative support, and information, under section 136.

## 2. The Act

Section 139:

(1) A worker health and safety representative is required

(a) in each workplace where there are more than 9 but fewer than 20 workers of the employer regularly employed, and

(b) in any other workplace for which a worker health and safety representative is required by order of the board.

(2) The worker health and safety representative must be selected in accordance with section 128 from among the workers at the workplace who do not exercise managerial functions at that workplace.

(3) To the extent practicable, a worker health and safety representative has the same duties and functions as a joint committee.

(4) Sections 133 to 136 apply in relation to a worker health and safety representative as if the representative were a joint committee or member of a joint committee.

## POLICY

A worker health and safety representative is required in each workplace where "there are more than 9 but fewer than 20 workers of the employer regularly employed". A workplace will fall within the terms of this provision if it normally has more than 9 but fewer than 20 workers who have been employed at the workplace for a period of not less than one month.

In deciding whether to order a worker health and safety representative under section 139(1)(b), the Board will follow the same criteria as when deciding whether to order a joint committee under section 125(b). Where the Board orders a joint committee under section 125(b), a worker health and safety representative under section 139(1)(a) is not required.

In interpreting section 139(4), the right to take time off work to attend and prepare for joint committee meetings under section 134 does not apply to a sole worker health and safety representative.

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| **EFFECTIVE DATE:** | October 1, 1999 |
| **AUTHORITY:** | s.139, *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also s. 125(b), *Workers Compensation Act*; Joint Committees – When a Committee is Required (Item D4-125-1) |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes. |
| **APPLICATION:** | |

**RE: Joint Committees – Participation of Worker Representative in Inspections** **ITEM: D4-140-1**

# BACKGROUND

## 1. Explanatory Notes

These sections provide for the participation of a worker member from the joint committee, the worker health and safety representative or another worker representative on inspections.

## 2. The Act

Section 140:

> If
>
> (a) this Part or the regulations give a worker representative the right to be present for an inspection, investigation or inquiry at a workplace, and
>
> (b) no worker representative is reasonably available,
>
> the right may be exercised by another worker who has previously been designated as an alternate by the worker representative.

Section 182(1)(b):

> (1) Subject to this section, if an officer makes a physical inspection of a workplace under section 179,
>
> (a) the employer or a representative of the employer, and
>
> (b) a worker representative or, if there is no worker representative or the worker representative is not reasonably available, a reasonably available worker selected by the officer as a representative,
>
> are entitled to accompany the officer on the inspection.

Section 106:

> **"worker representative"** means
>
> (a) in relation to a workplace for which there is a joint committee, a worker representative on the committee, and
>
> (b) in relation to a workplace for which there is a worker health and safety representative, that representative

## POLICY

There is no POLICY for this Item.

## PRACTICE

The Board will only exercise the authority under section 182 to select a worker representative if the actual worker representative fails to designate an alternate under section 140 or if the designated alternative is not available.

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| **EFFECTIVE DATE:** | October 1, 1999 |
| **AUTHORITY:** | s.140, 182, *Workers Compensation Act* |
| **CROSS REFERENCES:** | |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to make formatting changes. |
| **APPLICATION:** | |

# DIVISION 6

# PROHIBITION AGAINST DISCRIMINATORY ACTION

Division 6 of Part 3 of the *Workers Compensation Act* prohibits employers and unions from taking or threatening discriminatory action against workers. It defines "discriminatory action", outlines processes for workers to make complaints and the Board to investigate a complaint and provides for various remedies which the Board may award to the worker if the Board determines that discriminatory action has occurred.

Division 6 also allows workers to make complaints when employers fail to pay wages required by Part 3 or the regulations and authorizes the Board to investigate and award remedies where appropriate.

**RE: Discriminatory Actions/ Failure to Pay Wages – Scope**

**ITEM: D6-150/151/152-1**

# BACKGROUND

## 1. Explanatory Notes

Workers have a right to complain to the Board regarding:

- "discriminatory action" by their employer or union; or
- the failure by their employer to pay wages required by Part 3 or the regulations.

"Discriminatory action" includes any act or omission by an employer or union, or a person acting on behalf of an employer or union, that adversely affects a worker with respect to any term or condition of employment, or of membership in a union.

The *Act* defines "discriminatory action" by including within it certain matters. The phrase could also include other matters that normally fall within the meaning of "discrimination". However, the *Act* only provides rights for a worker when the "discriminatory action" relates to the matters outlined in section 151.

Section 152 describes how a worker, who considers that the worker's employer or union has taken, or threatened to take, discriminatory action against the worker or has failed to pay the wages required by Part 3 or the regulations, may make a complaint to the Board. It includes the time limits within which the complaint must be made.

## 2. The Act

Section 150:

(1) For the purposes of this Division, **"discriminatory action"** includes any act or omission by an employer or union, or a person acting on behalf of an employer or union, that adversely affects a worker with respect to any term or condition of employment, or of membership in a union.

(2) Without restricting subsection (1), discriminatory action includes

(a) suspension, lay-off or dismissal,

(b) demotion or loss of opportunity for promotion,

(c) transfer of duties, change of location of workplace, reduction in wages or change in working hours,

(d) coercion or intimidation,

(e) imposition of any discipline, reprimand or other penalty, and

(f) the discontinuation or elimination of the job of the worker.

Section 151:

An employer or union, or a person acting on behalf of an employer or union, must not take or threaten discriminatory action against a worker

(a) for exercising any right or carrying out any duty in accordance with this Part, the regulations or an applicable order,

(b) for the reason that the worker has testified or is about to testify in any matter, inquiry or proceeding under this Act or the *Coroners Act* on an issue related to occupational health and safety or occupational environment, or

(c) for the reason that the worker has given any information regarding conditions affecting the occupational health or safety or occupational environment of that worker or any other worker to

(i) an employer or person acting on behalf of an employer,

(ii) another worker or a union representing a worker, or

(iii) an officer or any other person concerned with the administration of this Part.

Section 152:

(1) A worker who considers that

(a) an employer or union, or a person acting on behalf of an employer or union, has taken, or threatened to take, discriminatory action against the worker contrary to section 151, or

(b) an employer has failed to pay wages to the worker as required by this Part or the regulations

may have the matter dealt with through the grievance procedure under a collective agreement, if any, or by complaint in accordance with this Division.

(2) A complaint under subsection (1) must be made in writing to the Board,

(a) in the case of a complaint referred to in subsection (1) (a), within 1 year of the action considered to be discriminatory, and

(b) in the case of a complaint referred to in subsection (1) (b), within 60 days after the wages became payable.

(3) In dealing with a matter referred to in subsection (1), whether under a collective agreement or by complaint to the Board, the burden of proving that there has been no such contravention is on the employer or the union, as applicable.

## POLICY

Section 152 applies to a failure of the employer to pay wages to the worker as required by the Part.

Some sections do not use the term "wages", but require the worker to be paid for lost time, notably:

- 134(2) (time off work by members of joint committees);
- 135(3) (educational leave for committee members - section 152 only applies to the payment of wages, not other costs such as travel expenses );
- 182(4) (worker accompanying inspection); and
- 192(1) (lay off resulting from stop work order).

As the payments under these sections are in substances "wages", a failure to pay them may be remedied by a complaint under section 152.

**EFFECTIVE DATE:** July 1, 2003
**AUTHORITY:** ss. 150, 151, and 152 *Workers Compensation Act*
**CROSS REFERENCES:**
**HISTORY:** Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.
Item developed to implement the *Workers Compensation (Occupational Health and Safety) Act, 1998, effective October 1, 1999.* Effective July 1, 2003 minor change made to strike out references to sections 147 and 148, as these sections were never proclaimed into effect.
**APPLICATION:**

**RE: Discriminatory Actions/ Failure to Pay Wages – Investigation of Complaint**

**ITEM: D6-153-1**

# BACKGROUND

## 1. Explanatory Notes

Upon receipt of a complaint, the Board must immediately inquire into the matter.

In dealing with a matter regarding discriminatory action, the burden of proving there has been no such contravention is on the employer or the union, as applicable.

## 2. The Act

Section 153(1):

> If the board receives a complaint under section 152 (2), it must immediately inquire into the matter and, if the complaint is not settled or withdrawn, must
>
> (a) determine whether the alleged contravention occurred, and
>
> (b) deliver a written statement of the board's determination to the worker and to the employer or union, as applicable.

# POLICY

When the Board receives a complaint from a worker within the time frame allowed by section 152(2), the Board will, where further information is needed, carry out an initial inquiry to establish the basic facts alleged by the worker and to determine whether, if accurate, they fall within the terms of section 152. Inquiry will also be made as to what remedy the worker is seeking.

Copies of documents supplied by the worker, as well as the results of any Board inquiry, will be provided to the employer or union against whom the complaint is made. The employer or union will then be given time to meet its onus under section 152(3) of proving that no contravention of the *Act* or regulations took place and to comment on the remedy proposed by the worker. The worker will be provided with a copy of the Board's investigation as well as any response to the complaint by the employer or union, and given an opportunity to respond.

Further inquiries by the Board may then be made, as well as exchanges of submissions and information that may be required by the rules of natural justice. An oral hearing is not required, but may be held if the Board considers it necessary to properly decide a complaint.

The worker may withdraw a complaint at any time, settle the dispute privately with the employer or union, or pursue alternative remedies under a collective agreement.

The worker cannot pursue both a grievance under a collective agreement and a complaint to the Board regarding the same alleged discriminatory action or failure to pay wages. The worker is required to elect between the two processes.

If the worker elects to pursue a grievance under a collective agreement, but the union decides not to pursue the grievance, the worker may revoke his or her election within 30 days of the union's decision and pursue a complaint to the Board. The complaint must, however, still be made within one year of the action considered to be discriminatory or within 60 days after the wages became payable.

## PRACTICE

The Board will consider granting an oral hearing when:

- there is a significant issue of credibility;
- there is evidence that must be presented orally;
- the decision to be reviewed raises an issue of general significance; or
- there are other grounds for having an oral hearing.

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**EFFECTIVE DATE:** October 1, 1999
**AUTHORITY:** s.153(1), *Workers Compensation Act*
**CROSS REFERENCES:**
**HISTORY:** Housekeeping changes effective September 15, 2010 to replace a reference to reviewing officer with the Board and make formatting changes.

**APPLICATION:**

**RE: Discriminatory Actions/ Failure to Pay Wages – Remedies**

**ITEM: D6-153-2**

# BACKGROUND

## 1. Explanatory Notes

Section 153(2) sets out the remedies that the Board may order if the Board, after investigation, determines that there has been discriminatory action or a failure to pay wages.

## 2. The Act

Section 153(2):

> If the board determines that the contravention occurred, the board may make an order requiring one or more of the following:
>
> (a) that the employer or union cease the discriminatory action;
>
> (b) that the employer reinstate the worker to his or her former employment under the same terms and conditions under which the worker was formerly employed;
>
> (c) that the employer pay, by a specified date, the wages required to be paid by this Part or the regulations;
>
> (d) that the union reinstate the membership of the worker in the union;
>
> (e) employer's or union's records on the worker be removed;
>
> (f) that the employer or the union pay the reasonable out of pocket expenses incurred by the worker by reason of the discriminatory action;
>
> (g) that the employer or the union do any other thing that the board considers necessary to secure compliance with this Part and the regulations.

# POLICY

## (a) Object of awarding remedies

The Board's object in exercising these powers is, as far as is practicable, to put the worker in the same position as the worker would have been if the discriminatory action or the failure to pay wages had not occurred. This may involve measuring not only the worker's actual loss, but determining whether there were any measures the worker could have reasonably taken to reduce or eliminate that loss.

## (b) Factors considered in awarding remedies

The factors considered in determining the worker's loss include:

- whether the worker has tried to eliminate or reduce the loss and, if the worker has not done so, whether it would have been reasonable for the worker to have tried;

- any collateral benefits the worker has received from the employer (collateral benefits from a source other than the employer, such as employment insurance and private insurance benefits, are not to be considered); and

- other circumstances affecting the worker's loss that arise independently of the worker's conduct after the discriminatory action or failure to pay wages has occurred, for example, the closure of the place of employment.

## (c) Explanation of Specific Remedies

### Reinstatement to employment

The Board may order reinstatement to employment retroactive to when the discriminatory action occurred.

### Payment of wages

The Board may make orders with respect to payment of wages in a variety of circumstances. These include:

- an order for reinstatement that requires the employer to pay back wages, reinstate benefits retroactively and perform other incidental acts. The authority to do this is found in section 153(2)(b);

- an order that requires the employer to pay, by a specified date, the wages required to be paid under Part 3 or the regulations. The authority to do this is found in section 153(2)(c); and

- an order that requires an employer to reimburse the loss of pay where the discriminatory action involved the employer reducing the worker's pay. The authority to do this is found in section 153(2)(g).

The wages, salaries and other employment benefits covered by these provisions are those falling within the definition of "wages" in the *Employment Standards Act*. This definition does not include every payment or benefit that workers receive as a result of their employment.

**Expenses**

The Board has discretion to order the employer or union to pay reasonable out-of-pocket expenses incurred by the worker by reason of the discriminatory action.

Since the Board carries out the initial inquiry that is necessary to establish the basic facts of the worker's complaint, the worker does not need to incur costs in making a complaint. If the worker feels that a particular inquiry is needed, he or she can request the Board to do this.

The employer or union will meet their own costs of proving that no contravention of the *Act* took place and responding to any material supplied by the Board or arising out of the Board's inquiry.

Where a complaint is upheld, the Board will not normally make orders that the employer or union pay legal or other costs incurred by the worker in order to pursue the complaint. Similarly, where the complaint is not upheld, the Board will not normally order the worker to pay the legal and other costs of the employer or union. Such orders may be made under section 100 of the *Act* in exceptional situations. These include where there has been flagrant abuse by the employer, worker or union of their rights and responsibilities under the *Act* and regulations.

## (d) Other action by the employer or union

The Board's authority to award remedies under section 153(2) extends only to discriminatory action or failure to pay wages as defined by Division 6. It does not apply to other actions that may be taken by an employer or union.

### (e) Other action by the Board

These remedies only apply when there has been a formal written complaint by the worker.

However, the Board may use its other enforcement powers, including an administrative penalty under section 196, to address discriminatory actions or failures to pay wages, whether there has been a formal written complaint or not.

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| **EFFECTIVE DATE:** | October 1, 1999 |
| **AUTHORITY:** | s. 153(2), *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also ss. 100, 106 (Definition of "wages"), *Workers Compensation Act* |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes. |
| **APPLICATION:** | |

# DIVISION 9

# VARIANCE ORDERS

Division 9 of Part 3 of the *Workers Compensation Act* authorizes the Board to grant variances from provisions of the regulations. It establishes the criteria to be used by the Board in considering whether to grant a variance and the effective period for a variance order. The provisions set out the processes to be used by an applicant for a variance and by the Board in making a decision on the application. The legal effect of a variance is identified.

**RE: Variance Orders – Information Required** **ITEM: D9-166-1**

# BACKGROUND

## 1. Explanatory Notes

Section 166 sets out the information to be provided by an applicant for a variance. Section 166(3) requires the applicant to provide the technical and other information required by the Board.

## 2. The Act

Section 166:

(1) Subject to the regulations and subsection (2), an application for a variance must be made in writing to the board and must include

(a) a description of the requested variance,

(b) a statement of why the variance is requested, and

(c) information with respect to the benefits and drawbacks in relation to the matters addressed by the regulation that might reasonably be anticipated if the variance is allowed.

(2) In the case of an application by a single worker for a variance order that would apply only to that worker, an application may be made as permitted by the board.

(3) The applicant must also provide the board with the technical and any other information required by the board to deal with the application.

# POLICY

In the case of an application under section 166(1), the “other information” required by the Board from an employer under section 166(3) will generally include:

- the location of the workplace;
- the type and nature of the work process;
- the regulation(s) proposed for modification;

- a description of the proposed procedure or practice that would provide an equivalent level of health and safety to that provided for by the regulation(s);
- how workers will be trained and supervised; and
- confirmation that:
    - the variance application has been posted at the workplace, and a copy has been provided to the joint health and safety committee or the worker health and safety representative and to the union, if the workers at the workplace are represented by the union, or
    - if the workplace is not yet in existence, notice has been published where it would reasonably be expected to come to the attention of persons who may be affected.

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| **EFFECTIVE DATE:** | April 1, 2002 |
| **AUTHORITY:** | s.166, *Workers Compensation Act* |
| **CROSS REFERENCES:** | |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br>Replaces part of Policy No. 1.2.5 of the Prevention Division *Policy and Procedure Manual* |
| **APPLICATION:** | This Item results from the 2000/2001/2002 "editorial" consolidation of all Prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 1.2.5, as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 1.2.5 was issued. |

**RE: Variance Orders – Consultation on Application** **ITEM: D9-168-1**

# BACKGROUND

## 1. Explanatory Notes

Section 168 requires the Board to give notice of an application for a variance and conduct the consultations on the application that the Board considers advisable.

## 2. The Act

Section 168:

(1) After receiving an application for variance, the board may give notice of the application and conduct consultations respecting that application as the board considers advisable.

(2) Before making a decision on an application, the board must provide an opportunity for persons who may be affected by the requested variance to submit to the board information respecting their position on the requested variance.

(3) A union representing workers who may be affected by the requested variance is considered a person who may be affected for the purposes of subsection (2).

# POLICY

The persons whom the Board will notify and consult respecting the application for a variance include:

- the chairs of the joint health and safety committee or worker health and safety representative;
- the union, if workers in the workplace are represented by the union; and
- if there is no committee, worker health and safety representative or union at the workplace, a worker representative, if practicable.

The persons notified will be asked for comments, invited to participate in any hearing or other proceedings that may be held on the application, and advised of the decision.

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| **EFFECTIVE DATE:** | April 1, 2002 |
| **AUTHORITY:** | s.168, *Workers Compensation Act* |
| **CROSS REFERENCES:** | |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br>Replaces part of Policy No. 1.2.5 of the Prevention Division *Policy and Procedure Manual* |
| **APPLICATION:** | This Item results from the 2000/2001/2002 "editorial" consolidation of all Prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 1.2.5, as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 1.2.5 was issued. |

# DIVISION 10

# ACCIDENT REPORTING AND INVESTIGATION

Division 10 of Part 3 of the *Workers Compensation Act* requires employers to immediately notify the Board of certain accidents and conduct investigations of those accidents and other situations. It also prohibits an employer or supervisor from attempting to prevent a worker reporting an injury, illness, death or hazardous condition.

**RE: Major Release of Hazardous Substance** **ITEM: D10-172-1**

# BACKGROUND

## 1. Explanatory Notes

Section 172(1) sets out the situations where the employer must immediately notify the Board of the occurrence of any accident.

## 2. The Act

Section 172(1):

> An employer must immediately notify the board of the occurrence of any accident that
>
> (a) resulted in serious injury to or the death of a worker,
> (b) involved a major structural failure or collapse of a building, bridge, tower, crane, hoist, temporary construction support system or excavation,
> (c) involved the major release of a hazardous substance,
> (c.1) involved a fire or explosion that had a potential for causing serious injury to a worker, or
> (d) was an incident required by regulation to be reported.

# POLICY

Section 172(1)(c) requires the employer to notify the Board of any accident that involved the major release of a hazardous substance.

A major release does not only mean a considerable quantity, or the peculiar nature of the release, such as a gas or volatile liquid, but, more importantly, the seriousness of the risk to the health of workers. Factors that determine the seriousness of the risk include the degree of preparedness of the employer to respond to the release, the necessity of working in close proximity to the release, the atmospheric conditions at the time of the release and the nature of the substance.

As a general guideline, a report would be expected when:

- The incident resulted in an injury that required immediate medical attention beyond the level of service provided by a first aid attendant, or injuries to several workers that require first aid.
- The incident resulted in a situation of continuing danger to workers, such as when the release of a chemical cannot be readily or quickly cleaned up.

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| **EFFECTIVE DATE:** | April 1, 2001 |
| **AUTHORITY:** | s.172(1), *Workers Compensation Act* |
| **CROSS REFERENCES:** | |
| **HISTORY:** | Housekeeping change to Background section to reflect amendments to the *Act*, effective January 1, 2016.<br>Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br>Replaces Policy No. 6.02(c) of the Prevention Division *Policy and Procedure Manual* |
| **APPLICATION:** | This Item results from the 2000/2001 "editorial" consolidation of all prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 6.02(c), as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 6.02(c) was issued. |

**RE: Preliminary Incident Investigation, Report and Follow-Up Action** **ITEM: D10-175-1**

# BACKGROUND

## 1. Explanatory Notes

Section 175 of the *Act* sets out the requirements for an employer to conduct a preliminary investigation of a section 173 incident within 48 hours of the incident. Depending on the complexity of the investigation, it may be possible for an employer to complete its section 176 full investigation obligations within 48 hours of the incident. Direction on these situations is set out in Policy D10-176-1 (Full Incident Investigation, Report and Follow-Up Action).

Section 174 of the *Act* sets out how worker and employer representatives may participate in investigations.

Note: In some cases, the Regulation provides specific and exclusive direction to investigate and report accidents or incidents in accordance with Part 3 of the Regulation.

## 2. Legal Authority

Section 127, *Act*

A joint committee for a workplace must be established in accordance with the following:

…

(b) it must consist of worker representatives and employer representatives;

Section 130, *Act*:

A joint committee has the following duties and functions in relation to its workplace:

…

(h) to ensure that accident investigations and regular inspections are carried out as required by this Part and the regulations;

(i) to participate in inspections, investigations and inquiries as provided in this Part and the regulations;

…

Section 172, *Act*:

(1) An employer must immediately notify the Board of the occurrence of any accident that

(a) resulted in serious injury to or the death of a worker,

(b) involved a major structural failure or collapse of a building, bridge, tower, crane, hoist, temporary construction support system or excavation,

(c) involved the major release of a hazardous substance,

(c.1) involved a fire or explosion that had a potential for causing serious injury to a worker, or

(d) was an incident required by regulation to be reported.

(2) Except as otherwise directed by an officer of the Board or a peace officer, a person must not disturb the scene of an accident that is reportable under subsection (1) except so far as is necessary to

(a) attend to persons injured or killed,

(b) prevent further injuries or death, or

(c) protect property that is endangered as a result of the accident.

Section 173, *Act*:

(1) An employer must conduct a preliminary investigation under section 175 and a full investigation under section 176 respecting any accident or other incident that

(a) is required to be reported by section 172,

(b) resulted in injury to a worker requiring medical treatment,

(c) did not involve injury to a worker, or involved only minor injury not requiring medical treatment, but had a potential for causing serious injury to a worker, or

(d) was an incident required by regulation to be investigated.

(2) Subsection (1) does not apply in the case of a vehicle accident occurring on a public street or highway.

Section 174, *Act*:

(1) An investigation required under this Division must be carried out by persons knowledgeable about the type of work involved and, if they are reasonably available, with the participation of the employer or a representative of the employer and a worker representative.

(1.1) For the purposes of subsection (1), the participation of the employer or a representative of the employer and a worker representative includes, but is not limited to, the following activities:

(a) viewing the scene of the incident with the persons carrying out the investigation;

(b) providing advice to the persons carrying out the investigation respecting the methods used to carry out the investigation, the scope of the investigation, or any other aspect of the investigation;

(c) other activities, as prescribed by the Board.

…

(3) The employer must make every reasonable effort to have available for interview by a person conducting the investigation, or by an officer, all witnesses to the incident and any other persons whose presence might be necessary for a proper investigation of the incident.

(4) The employer must record the names, addresses and telephone numbers of persons referred to in subsection (3).

Section 175, *Act*:

(1) An employer must, immediately after the occurrence of an incident described in section 173, undertake a preliminary investigation to, as far as possible,

(a) identify any unsafe conditions, acts or procedures that significantly contributed to the incident, and

(b) if unsafe conditions, acts or procedures are identified under paragraph (a) of this subsection, determine the corrective action necessary to prevent, during a full investigation under section 176, the recurrence of similar incidents.

(2) The employer must ensure that a report of the preliminary investigation is

(a) prepared in accordance with the policies of the board of directors,

(b) completed within 48 hours of the occurrence of the incident,

(c) provided to the Board on request of the Board, and

(d) as soon as practicable after the report is completed, either

(i) provided to the joint committee or worker health and safety representative, as applicable, or

(ii) if there is no joint committee or worker health and safety representative, posted at the workplace.

(3) Following the preliminary investigation, the employer must, without undue delay, undertake any corrective action determined to be necessary under subsection (1)(b).

(4) If the employer takes corrective action under subsection (3), the employer, as soon as practicable, must

(a) prepare a report of the action taken, and

(b) either

(i) provide the report to the joint committee or worker health and safety representative, as applicable, or

(ii) if there is no joint committee or worker health and safety representative, post the report at the workplace.

**3. Interpretation Act**

Section 25:

…

(2) If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday.

(3) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

Section 29:

In an enactment:

…

"holiday" includes

(a) Sunday, Christmas Day, Good Friday and Easter Monday,

(b) Canada Day, Victoria Day, British Columbia Day, Labour Day, Remembrance Day, Family Day and New Year's Day,

(c) December 26, and

(d) a day set by the Parliament of Canada or by the Legislature, or appointed by proclamation of the Governor General or the Lieutenant Governor, to be observed as a day of general prayer or mourning, a day of public rejoicing or thanksgiving, a day for celebrating the birthday of the reigning Sovereign, or as a public holiday;

# POLICY

### 1. Investigation Participants

Section 174 requires a preliminary investigation to be carried out by persons knowledgeable about the type of work involved. It also requires the participation of the employer or employer representative, and a worker representative, if they are reasonably available.

### 2. Incidents Requiring a Preliminary Investigation

Unless the accident or incident is a vehicle accident occurring on a public street or highway, section 175(1) requires an employer to undertake a preliminary investigation immediately after the occurrence of any of the following:

- an accident that resulted in serious injury to or the death of a worker;
- an accident that involved a major structural failure or collapse of a building, bridge, tower, crane, hoist, temporary construction support system or excavation;
- an accident that involved the major release of a hazardous substance;
- an accident that involved a fire or explosion that had a potential for causing serious injury to a worker;
- a blasting accident that causes personal injury;
- a dangerous incident involving explosives other than a blasting accident, regardless of whether it caused personal injury;
- a diving incident, as defined in the Regulation;

- any accident or other incident that resulted in injury to a worker requiring medical treatment; and

- any accident or other incident that did not involve injury to a worker, or involved only minor injury not requiring medical treatment, but had a potential for causing serious injury to a worker.

### 3. Identifying Unsafe Conditions, Acts or Procedures

The *Act* requires employers to immediately undertake a preliminary investigation to identify any unsafe conditions, acts or procedures as far as possible, in order to ensure that work can be continued or resumed safely during the interim period between the incident and the conclusion of the full investigation.

What constitutes "as far as possible" during the preliminary investigation may be limited due to circumstances of the accident or incident that are outside of the employer's control.

It is not possible to list all the limitations on what may inhibit an employer's ability to identify unsafe conditions, acts or procedures. However, if an employer is

- only able to identify some, or

- only able to identify in broader or more general terms,

the unsafe conditions, acts or procedures that significantly contributed to the section 173 incident, the employer should include these limitations in its preliminary investigation report.

The following are some of the circumstances in which WorkSafeBC may consider that it is not possible for an employer to identify all the unsafe conditions, acts or procedures that significantly contributed to the section 173 incident. This is not an exhaustive list:

- the persons injured in the incident are not available (e.g. unconscious in hospital);

- there were no witnesses to the incident;

- the employer is prohibited from entering the workplace or part of the workplace, because WorkSafeBC, the police, or other agencies are attending at the scene of the incident and conducting their own investigations;

- WorkSafeBC has issued an order to stop use under section 190 or stop work under section 191, and the exceptions for permitting a worker to enter the workplace or part of the workplace that is the subject of the order cannot be met; or

- WorkSafeBC has taken documents, equipment, or other items, which the employer also needs to investigate.

## 4. Determining Interim Corrective Action

As part of the preliminary investigation, the *Act* requires the employer to determine the corrective action necessary to prevent a recurrence of the section 173 incident during the period of the full investigation. This means the employer must identify interim corrective actions that can be undertaken between the time of the section 173 incident, and the deadline plus any extensions, for submitting the full investigation report under section 176 (see Policy D10-176-1).

Employers must take all actions reasonably necessary to prevent a recurrence during the interim period. If an employer is only able to identify some, or only able to identify in broader or more general terms, the unsafe conditions, acts or procedures that significantly contributed to the section 173 incident, the interim corrective action may include a full or partial shutdown of a worksite, removing equipment, or reassigning workers.

## 5. Elements of Preliminary Investigation Reports

An employer's preliminary investigation report of the section 173 incident must contain the following elements, as far as possible:

(a) the place, date and time of the incident;

(b) the names and job titles of persons injured or killed in the incident;

(c) the names and job titles of witnesses;

(d) the names and job titles of any other persons whose presence might be necessary for a proper investigation of the incident;

(e) a statement of the sequence of events that preceded the incident;

(f) identification of any unsafe conditions, acts or procedures that significantly contributed to the incident;

(g) employer identification and contact information;

(h) a brief description of the incident;

(i) the names and job titles of all persons set out in section 174(1) of the *Act*, who carried out or participated in the preliminary investigation of the incident;

(j) interim corrective actions the employer has determined to prevent the recurrence of similar incidents, for the interim period between the occurrence of the incident and the submission of the full investigation report;

(k) information about what interim corrective action has been taken and when any corrective actions not yet implemented will be taken; and

(l) the circumstances of the accident or incident that preclude the employer from addressing a particular element of the above-listed elements during the preliminary investigation period.

Blasting and diving have industry-specific reporting requirements under the Regulation, in addition to those under sections 175 and 176 of the *Act*. An employer may combine one or more reports as long as all the applicable requirements, including those regarding timing, are met.

Section 174(4) of the *Act* requires the employer to record the addresses and telephone numbers of witnesses and any other persons whose presence might be necessary for a proper investigation of the incident. This does not form part of the preliminary investigation report.

## 6. Producing the Preliminary Investigation Report

The *Act* requires an employer to provide its preliminary investigation report to WorkSafeBC upon request.

The *Act* also requires an employer to provide a copy of the incident investigation report to the joint committee or worker health and safety representative, as applicable, and if there is no joint committee or worker health and safety representative, to post the report at the workplace. The *Act* requires this be done as soon as practicable after the report is completed.

## 7. Implementing Corrective Action

While an employer is undertaking the full investigation report due under section 176 (see Policy D10-176-1), the employer must also, without undue delay, take the corrective action it had determined was necessary to prevent a recurrence of similar section 173 incidents during the full investigation period. This interim corrective action must remain in place until the employer has:

(a) undertaken any further corrective action identified in the full investigation as necessary to prevent the recurrence of similar incidents following the full investigation; or

(b) determined that the interim corrective action is sufficient to prevent the recurrence of similar incidents following the full investigation.

The employer may modify the interim corrective action during the full investigation period, if it determines that the modified interim corrective action is more effective or as effective as the interim corrective action originally undertaken.

### 8. Interim Corrective Action Reporting

WorkSafeBC may request a copy of the interim corrective action report that the employer prepares following the preliminary investigation.

In the interim corrective action report, the employer must include:

(a) the unsafe conditions, acts or procedures that made the interim corrective action necessary;

(b) the interim corrective action taken to prevent the recurrence of similar incidents during the full investigation period;

(c) employer identification information;

(d) the names and job titles of the persons responsible for implementing the interim corrective action; and

(e) the date the interim corrective action was taken.

Where the employer completes the full investigation within 48 hours of the section 173 incident and determines the corrective action necessary to prevent the recurrence of similar incidents, the employer may prepare a single corrective action report to provide to the joint committee or worker health and safety representative, as applicable, or if there is no joint committee or worker health and safety representative, to post at the workplace. This would meet its corrective action reporting requirements for both sections 175 and 176 of the *Act*.

## PRACTICE

See:

- OHS Guideline G-D10-172-1, *WorkSafeBC Notification of Serious Injuries*.

| | |
|---|---|
| **EFFECTIVE DATE:** | January 1, 2016 |
| **AUTHORITY:** | s.175, *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also ss. 178, 179(3)(f) and (g), 187(2) and 187, *Workers Compensation Act*;<br>Accident Reporting and Investigation – Immediate Notice of Certain Accidents (Major Release of Hazardous Substance) (Item D10-172-1),<br>Accident Reporting and Investigation – Full Incident Investigation, Report and Follow-Up Action (Item D10-176-1). |
| **HISTORY:** | Housekeeping change effective May 1, 2017 to delete a reference to section 173(3) under "Elements of Preliminary Investigation Reports" and replace it with a reference to section 174(4).<br>Amended effective January 1, 2016 to reflect stakeholder consultation on interim polices and to implement changes resulting from the *Workers Compensation Amendment Act, (No. 2), 2015*, which received Royal Assent on November 17, 2015.<br>This Item was originally developed to implement the *Workers Compensation Amendment Act, 2015*, which received Royal Assent on May 14, 2015. |
| **APPLICATION:** | This policy applies to all accidents and incidents that occur on and after January 1, 2016. |

**RE: Full Incident Investigation, Report and Follow-Up Action** **ITEM: D10-176-1**

# BACKGROUND

## 1. Explanatory Notes

Section 176 of the *Act* sets out the requirements for an employer to conduct a full investigation immediately after completing a section 175 preliminary investigation of a section 173 incident. Depending on the complexity of the investigation, it may be possible for an employer to complete its section 176 full investigation obligations within 48 hours of the incident.

Section 174 of the *Act* sets out how worker and employer representatives may participate in investigations.

Note: In some cases, the Regulation provides specific and exclusive direction to investigate and report accidents or incidents in accordance with Part 3 of the Regulation.

## 2. Legal Authority

Section 127, *Act*

A joint committee for a workplace must be established in accordance with the following:

…

(b) it must consist of worker representatives and employer representatives;

Section 130, *Act*:

A joint committee has the following duties and functions in relation to its workplace:

…

(h) to ensure that accident investigations and regular inspections are carried out as required by this Part and the regulations;

(i) to participate in inspections, investigations and inquiries as provided in this Part and the regulations;

…

Section 172, *Act*:

(1) An employer must immediately notify the Board of the occurrence of any accident that

(a) resulted in serious injury to or the death of a worker,

(b) involved a major structural failure or collapse of a building, bridge, tower, crane, hoist, temporary construction support system or excavation,

(c) involved the major release of a hazardous substance,

(c.1) involved a fire or explosion that had a potential for causing serious injury to a worker, or

(d) was an incident required by regulation to be reported.

(2) Except as otherwise directed by an officer of the Board or a peace officer, a person must not disturb the scene of an accident that is reportable under subsection (1) except so far as is necessary to

(a) attend to persons injured or killed,

(b) prevent further injuries or death, or

(c) protect property that is endangered as a result of the accident.

Section 173, *Act*:

(1) An employer must conduct a preliminary investigation under section 175 and a full investigation under section 176 respecting any accident or other incident that

(a) is required to be reported by section 172,

(b) resulted in injury to a worker requiring medical treatment,

(c) did not involve injury to a worker, or involved only minor injury not requiring medical treatment, but had a potential for causing serious injury to a worker, or

(d) was an incident required by regulation to be investigated.

(2) Subsection (1) does not apply in the case of a vehicle accident occurring on a public street or highway.

Section 174, *Act*:

(1) An investigation required under this Division must be carried out by persons knowledgeable about the type of work involved and, if they are reasonably available, with the participation of the employer or a representative of the employer and a worker representative.

(1.1) For the purposes of subsection (1), the participation of the employer or a representative of the employer and a worker representative includes, but is not limited to, the following activities:

(a) viewing the scene of the incident with the persons carrying out the investigation;

(b) providing advice to the persons carrying out the investigation respecting the methods used to carry out the investigation, the scope of the investigation, or any other aspect of the investigation;

(c) other activities, as prescribed by the Board.

…

(3) The employer must make every reasonable effort to have available for interview by a person conducting the investigation, or by an officer, all witnesses to the incident and any other persons whose presence might be necessary for a proper investigation of the incident.

(4) The employer must record the names, addresses and telephone numbers of persons referred to in subsection (3).

Section 176, *Act*:

(1) An employer must, immediately after completing a preliminary investigation under section 175, undertake a full investigation to, as far as possible,

(a) determine the cause or causes of the incident investigated under section 175,

(b) identify any unsafe conditions, acts or procedures that significantly contributed to the incident, and

(c) if unsafe conditions, acts or procedures are identified under paragraph (b) of this subsection, determine the corrective action necessary to prevent the recurrence of similar incidents.

(2) The employer must ensure that a report of the full investigation is

(a) prepared in accordance with the policies of the board of directors,

(b) submitted to the Board within 30 days of the occurrence of the incident, and

(c) within 30 days of the occurrence of the incident, either,

(i) provided to the joint committee or worker health and safety representative, as applicable or

(ii) if there is no joint committee or worker health and safety representative, posted at the workplace.

(3) The Board may extend the time period, as the Board considers appropriate, for submitting a report under subsection (2)(b) or (c).

(4) Following the full investigation, the employer must, without undue delay, undertake any corrective action determined to be necessary under subsection (1)(c).

(5) If the employer takes corrective action under subsection (4), the employer, as soon as practicable, must

(a) prepare a report of the action taken, and

(b) either

(i) provide the report to the joint committee or worker health and safety representative, as applicable, or

(ii) if there is no joint committee or worker health and safety representative, post the report at the workplace.

# POLICY

### 1. Determining the Cause or Causes of the Incident

Employers must determine the cause or causes of the section 173 incident. "Determining the cause or causes" means analyzing the facts and circumstances of the incident to identify the underlying factors that led to the incident. This includes identifying the underlying factors that made the unsafe conditions, acts or procedures possible, and identifying health and safety deficiencies.

## 2. Elements of Full Investigation Reports

An employer's full investigation report of the section 173 incident must contain the following elements, as far as possible:

(a) Elements (a) through (f) of Item D10-175-1, *Preliminary Incident Investigation, Report and Follow-Up Action*, including any updates available following the preliminary investigation period;

(b) the employer's legal name, name it is doing business under, address, contact number, email address, and WorkSafeBC account number;

(c) the identification and contact information of other relevant workplace parties such as an owner, prime contractor, other persons actively involved in the accident or incident, or persons implementing the corrective action following the full investigation;

(d) determination of the cause or causes of the incident;

(e) a full description of the incident;

(f) the names and job titles of all persons set out in section 174(1) of the *Act*, who carried out or participated in the preliminary and full investigation of the incident;

(g) all corrective actions the employer has determined are necessary to prevent the recurrence of similar incidents; and

(h) information about what corrective action has been taken and when any corrective actions not yet implemented will be taken.

Depending on the complexity of the accident or incident investigation, an employer may complete its full investigation report within 48 hours. This would meet its requirements for section 175(1) of the *Act*. The full investigation report must then be submitted to the joint committee or worker health and safety representative, or if there is no joint committee or worker health and safety representative, posted at the workplace, as soon as practicable, to meet its requirements for section 175(2); and to WorkSafeBC within 30 days of the incident, to meet the full investigation reporting requirements of section 176. The corrective action reporting requirements are addressed in section 5 of this policy.

Blasting and diving have industry-specific reporting requirements under the Regulation, in addition to those under sections 175 and 176 of the *Act*. An employer may combine one or more reports as long as all the applicable requirements, including those regarding timing, are met.

Section 174(4) of the *Act* requires the employer to record the addresses and telephone numbers of witnesses and any other persons whose presence might be necessary for a proper investigation of the incident. This does not form part of the full investigation report.

### 3. Producing the Full Investigation Report

The *Act* requires an employer to submit its full investigation report to WorkSafeBC and the joint committee or worker health and safety representative, as applicable, or if there is no joint committee or worker health and safety representative, to post the report at the workplace.

### 4. Extensions for Submitting the Full Investigation Report

The *Act* requires employers to submit their full investigation reports within 30 days of the incident. Where an employer makes a request, WorkSafeBC may grant one or more extensions for submitting the full investigation report, if the employer identifies delays in its ability to complete its full investigation due to factors outside its control. Where WorkSafeBC grants an extension, employers should notify their joint committee or worker representative of the details of the extension.

It is not possible to list all of the situations where WorkSafeBC may consider it appropriate to grant extensions, but the following are some examples:

- where the remoteness of the location of the accident or incident requiring investigation creates delays in an employer's investigation;
- where the technical aspects of the investigation cannot be evaluated within 30 days of the accident or incident;
- where third party reports related to the full investigation are pending;
- if an investigation by WorkSafeBC, the police, or another agency restricts the employer's ability to investigate the cause or causes of the accident or incident;
- where an employer does not know about an accident or incident that resulted in injury to a worker, because there is a delay in the worker seeking the related medical treatment; and
- any other circumstances where WorkSafeBC considers it reasonable.

### 5. Corrective Action Reporting Following the Full Investigation

WorkSafeBC may request a copy of the corrective action report that the employer prepares following the full investigation.

In the corrective action report prepared following the full investigation, the employer must include:

(a) the unsafe conditions, acts or procedures that made the corrective action necessary;

(b) the corrective action taken to prevent the recurrence of similar incidents following the full investigation;

(c) employer identification information;

(d) the names and job titles of the persons responsible for implementing the corrective action following the full investigation; and

(e) the date the corrective action was taken.

Where the employer completes the full investigation within 48 hours of the section 173 incident and determines the corrective action necessary to prevent the recurrence of similar incidents, the employer may prepare a single corrective action report to provide to the joint committee or worker health and safety representative, as applicable, or if there is no joint committee or worker health and safety representative, to post at the workplace. This would meet its corrective action reporting requirements for both sections 175 and 176 of the *Act*.

## PRACTICE

See:

- OHS Guideline G-D10-172-1, *WorkSafeBC Notification of Serious Injuries*.

| | |
|---|---|
| **EFFECTIVE DATE:** | January 1, 2016 |
| **AUTHORITY:** | s.176, *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also s. 187, *Workers Compensation Act*;<br>Accident Reporting and Investigation – Immediate Notice of Certain Accidents (Major Release of Hazardous Substance) (Item D10-172-1),<br>Accident Reporting and Investigation – Preliminary Incident Investigation, Report and Follow-Up Action (Item D10-175-1). |
| **HISTORY:** | Housekeeping change effective May 1, 2017 to delete a reference to section 173(3) under "Elements of Preliminary Investigation Reports" and replace it with a reference to section 174(4).<br>Amended effective January 1, 2016 to reflect stakeholder consultation on interim polices and to implement changes resulting from the *Workers Compensation Amendment Act, (No. 2), 2015*, which received Royal Assent on November 17, 2015.<br>This Item was originally developed to implement the *Workers Compensation Amendment Act, 2015*, which received Royal Assent on May 14, 2015. |
| **APPLICATION:** | This policy applies to all accidents and incidents that occur on and after January 1, 2016. |

# DIVISION 12

# ENFORCEMENT

Division 12 of Part 3 of the *Workers Compensation Act* deals with compliance and enforcement tools. This section of the manual includes a number of policies including the following:

- OHS Compliance Agreements (D12-186.1-1)
- OHS Compliance Orders (D12-187-1)
- Stop Work Orders (D12-191-1)
- Cancellation and Suspension of Certificates (D12-195-1)
- OHS Penalties (D12-196-1, -3, -6, -10),
- OHS Warning Letters (D12-196-11)
- OHS Citations (D12-196.1-1)
- OHS Injunctions (D12-198-1)

**RE: OHS Compliance Agreements** **ITEM: D12-186.1-1**

# BACKGROUND

## 1. Explanatory Notes

Instead of issuing an order, WorkSafeBC may, in certain circumstances, enter into a compliance agreement in which an employer voluntarily agrees to correct OHS violations and report back to WorkSafeBC by a specific date. This policy outlines when WorkSafeBC can enter into or cancel a compliance agreement.

Compliance agreements are offered at WorkSafeBC's discretion, within the limits of the *Act* and this policy. WorkSafeBC will only enter into a compliance agreement if WorkSafeBC believes that the employer will likely fulfill its obligations under the agreement.

Compliance agreements allow WorkSafeBC to engage with a responsive employer to correct non-high risk violations and improve workplace safety. While the compliance agreement is in effect, WorkSafeBC will not issue an order for any violations specifically described in the compliance agreement.

If a compliance agreement is rescinded (in other words, cancelled), WorkSafeBC will, except in exceptional circumstances, write orders for any outstanding OHS violations specifically described in the agreement.

For ease of reference, this policy incorporates the requirements of the *Act* along with the policy. All section references in this policy refer to the *Act*.

## 2. The *Act*

Section 186.1

(1) The Board may enter into an agreement with an employer if the Board considers that

(a) the employer has contravened, or failed to comply with, a provision of this Part or the regulations,

(b) the employer has not contravened, or not failed to comply with, the same provision described in paragraph (a) within the 12 month period immediately preceding the contravention or failure as set out in that paragraph,

(c) the health or safety of workers, for which the employer has responsibilities under this Act, is not at immediate risk, and

(d) entering into the agreement is appropriate in the circumstances.

(2) [A compliance agreement]:

(a) must be in writing,

(b) must describe one or more actions the employer agrees to take, which may include one or more expenditures the employer agrees to make, to remedy the employer's contravention or failure as set out in subsection (1)(a) or the adverse effects that resulted from that contravention or failure,

(c) must set out the time frame within which the employer, with respect to each action described under paragraph (b) of this subsection, agrees to

(i) take the action, and

(ii) report to the Board on the action taken,

(d) must specify the date the agreement ends,

(e) must set out the required manner, form and content of the report referred to in paragraph (c)(ii) of this subsection, and

(f) may, subject to subsection (4), be amended if agreed to by the Board and the employer.

(3) The employer must, as soon as practicable after

(a) entering into [a compliance agreement]

(i) provide a copy of the agreement to the joint committee or worker health and safety representative, as applicable, or

(ii) if there is no joint committee or worker health and safety representative, post a copy of the agreement at the workplace, and

(b) reporting to the Board under subsection (2)(c)(ii),

(i) provide a copy of the report to the joint committee or worker health and safety representative, as applicable, or

(ii) if there is no joint committee or worker health and safety representative, post a copy of the report at the workplace.

(4) The Board must rescind [a compliance agreement] if the Board considers that

(a) the employer has failed to

(i) take any of the actions described under subsection (2) (b) within the time frame set out for the action in subsection (2)(c)(i), or

(ii) report to the Board within the time frame set out in subsection (2) (c)(ii),

(b) the employer intentionally provided false or misleading information in relation to the agreement, or

(c) the health or safety of workers is at immediate risk, based on information received by the Board after the agreement was entered into.

(5) The Board may rescind [a compliance agreement] if the Board considers that the agreement no longer adequately protects the health or safety of workers.

(6) A rescission of an agreement under subsection (4) or (5) takes effect immediately despite the employer not having received notice.

(7) As soon as practicable after rescinding an agreement under subsection (4) or (5), the Board must

(a) make reasonable efforts to provide verbal notice of the rescission to the employer, and

(b) send written notice of the rescission to the employer.

(8) Section 221(4) to (6) does not apply to the sending of written notice under subsection (7)(b).

(9) The employer must, as soon as practicable after receiving written notice under subsection (7)(b),

(a) provide a copy of the written notice to the joint committee or worker health and safety representative, as applicable, or

(b) if there is no joint committee or worker health and safety representative, post a copy of the written notice at the workplace.

# POLICY

## 1. Entering into a compliance agreement

WorkSafeBC enters into compliance agreements at its own discretion, after considering the likelihood of an incident or exposure occurring because of the violation and the likely seriousness of any injury or illness that could result.

WorkSafeBC will not enter into a compliance agreement regarding a violation if:

(a) the violation puts worker health or safety at immediate risk (in other words, creates a likelihood of injury, illness or death if not immediately remedied) [s.186.1(1)(c)];

(b) the violation is high risk as defined in policy D12-196-2;

(c) the employer has contravened, within the last 12 months, the same provision of the *Act* or regulations [s.186.1(1)(b)]; or

(d) a previous compliance agreement with the employer was cancelled in the last 3 years due to the fault of the employer.

WorkSafeBC will only enter into a compliance agreement if WorkSafeBC believes that the employer will likely fulfill its obligations under the agreement. WorkSafeBC will consider various factors to determine this, which will include:

(e) the compliance history of the employer;

(f) the effectiveness of the employer's overall approach to managing health and safety;

(g) the employer's willingness to enter into the agreement; and

(h) information provided by workers and union representatives**.**

While the compliance agreement is in effect, WorkSafeBC will not issue an order for any violation specifically described in the agreement. If a compliance agreement is satisfactorily completed by an employer, WorkSafeBC will not retroactively issue an order for any violation specifically described in the agreement.

## 2. Requirements of a compliance agreement

Employers enter into compliance agreements voluntarily. Compliance agreements require the signature of an appropriate employer representative who is authorized to enter into agreements on behalf of the employer.

Section 186.1(2) requires that a compliance agreement must:

(a) be in writing;

(b) describe the corrective actions the employer agrees to take; and

(c) provide the date:

(i) when the employer must complete its corrective action ("action deadline");

(ii) when the employer must report back to WorkSafeBC ("report deadline"); and

(iii) when the agreement ends.

One compliance agreement may address multiple workplaces of an employer.

## 3. Amending an existing compliance agreement

A compliance agreement can be amended if WorkSafeBC and the employer agree to the amendments in writing. A compliance agreement cannot be amended after it has ended or been cancelled.

When considering whether to agree to amend an agreement, WorkSafeBC will consider the employer's progress towards correcting the violations set out in the compliance agreement, as well as the factors set out under 1(e) to (h) above.

## 4. Cancelling a compliance agreement

WorkSafeBC will cancel a compliance agreement if the agreement no longer adequately protects the health or safety of the workers.

Section 186.1(4) requires that a compliance agreement be cancelled if:

(a) the employer fails to complete its required actions by the action deadline;

(b) the employer fails to meet its reporting obligations by the report deadline;

(c) the employer intentionally provides false or misleading information in relation to the agreement; or

(d) the health or safety of workers is at immediate risk based on information received by WorkSafeBC after the agreement was entered into (in other words, there is a likelihood of injury, illness or death if the situation is not immediately remedied).

Section 186.1(7) requires WorkSafeBC to send written notice to the employer of a cancellation and make reasonable efforts to provide verbal notice. However, section 186.1(6) states that the cancellation of a compliance agreement takes effect immediately, whether or not the employer receives written or verbal notice.

If a compliance agreement is cancelled, WorkSafeBC will, except in exceptional circumstances, write orders for any outstanding OHS violations specifically described in the agreement.

## 5. Posting requirements

All compliance agreements will include a term that requires employers to post in the workplace copies of:

(a) compliance agreements;

(b) amended compliance agreements;

(c) compliance agreement reports; and

(d) notices of cancellation of compliance agreements.

Compliance agreements will also include a term that requires the above documents to be provided to the joint committee or worker health and safety representative, if applicable, and to the union if the compliance agreement relates to a workplace where workers of the employer are represented by a union.

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| **EFFECTIVE DATE:** | January 1, 2016 |
| **AUTHORITY:** | s. 186.1, *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also Policy D12-187-1 (Orders) |
| **HISTORY:** | Amended effective January 1, 2016 to change posting requirements and remove factor (i) in section 1 and insert it at the beginning of the section instead. The paragraph order in the Explanatory Notes section was also changed. |
| **APPLICATION*:*** | This policy is effective January 1, 2016 and applies to all inspections occurring on and after January 1, 2016. |

**RE: OHS Compliance Orders** **ITEM: D12-187-1**

# BACKGROUND

## 1. Explanatory Notes

Section 187(1) provides a broad general authority for the Board (operating as WorkSafeBC) to make orders for carrying out matters and things regulated, controlled or required by Part 3 or the regulations. This includes authority to make orders in a variety of specific situations set out in section 187(2).

This policy addresses orders directed towards remedying an occupational health and safety ("OHS") violation. An OHS compliance order is WorkSafeBC's primary tool to remedy non-compliance with health and safety requirements in the *Act* and Regulation.

Powers to make orders are also found in other sections of the *Act.* For example, section 196 provides that administrative penalties may be imposed by order. This policy does not address those types of orders.

Failure to comply with an order may be addressed by administrative penalties, injunctions, or prosecution.

## 2. The Act

Section 187:

(1) The Board may make orders for the carrying out of any matter or thing regulated, controlled or required by this Part or the regulations, and may require that the order be carried out immediately or within the time specified in the order.

(2) Without limiting subsection (1), the authority under that subsection includes authority to make orders as follows:

(a) establishing standards that must be met and means and requirements that must be adopted in any work or workplace for the prevention of work related accidents, injuries and illnesses;

(b) requiring a person to take measures to ensure compliance with this *Act* and the regulations or specifying measures that a person must take in order to ensure compliance with this *Act* and the regulations;

(c) requiring an employer to provide in accordance with the order a medical monitoring program as referred to in section 161;

(d) requiring an employer, at the employer's expense, to obtain test or assessment results respecting any thing or procedure in or about a workplace, in accordance with any requirements specified by the Board, and to provide that information to the Board;

(e) requiring an employer to install and maintain first aid equipment and service in accordance with the order;

(f) requiring a person to post or attach a copy of the order, or other information, as directed by the order or by an officer;

(g) establishing requirements respecting the form and use of reports, certificates, declarations and other records that may be authorized or required under this Part;

(h) doing anything that is contemplated by this Part to be done by order;

(i) doing any other thing that the Board considers necessary for the prevention of work related accidents, injuries and illnesses.

(3) The authority to make orders under this section does not limit and is not limited by the authority to make orders under another provision of this Part.

Section 188:

(1) An order may be made orally or in writing but, if it is made orally, must be confirmed in writing as soon as is reasonably practicable.

(2) An order may be made applicable to any person or category of persons and may include terms and conditions the Board considers appropriate.

(3) If an order relates to a complaint made by a person to the Board or an officer, a copy of the order must be given to that person.

(4) An officer of the Board may exercise the authority of the Board to make orders under this Part, subject to any restrictions or conditions established by the Board.

3. The Regulation

Section 2.4:

Every person to whom an order or directive is issued by the Board must comply promptly or by the time set out in the order or directive.

## POLICY

Workplace parties must comply with the *Act* and OHSR. An OHS Compliance order does not initiate the obligation to comply with the *Act* and regulations. It is not sufficient simply to obey a WorkSafeBC order after a violation, injury or disease has occurred.

When identifying violations at a workplace, WorkSafeBC will ordinarily write orders.

When a particular safety issue involves more than one employer or worker, WorkSafeBC will determine which workplace parties should be the recipients of orders.

In some cases, where there are a number of violations, WorkSafeBC may write orders to address the underlying health and safety issues without writing an order relating to each violation.

## PRACTICE

When WorkSafeBC identifies a violation but does not write an order, the circumstances should be documented in the inspection notes of the inspection report and the relevant regulations referenced for future tracking.

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**EFFECTIVE DATE:** March 1, 2013
**AUTHORITY:** s. 187, *Workers Compensation Act*
**CROSS REFERENCES:** s. 188, *Workers Compensation Act*, s. 2.4 Regulation
**HISTORY:** Amended effective March 1, 2013 to confirm WorkSafeBC's discretion regarding writing orders and to align policy with the practice of WorkSafeBC.

Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.

Item developed to implement the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998*, effective October 1, 1999. Consequential changes subsequently made to the restatement of section 187 to reflect the *Workers Compensation Amendment Act, 2002* and to the Explanatory Notes and the cross-references to reflect the *Workers Compensation Amendment Act (No. 2), 2002,* on March 3, 2003. Effective December 31, 2003, this policy incorporates portions of Procedure No. 1.3.3-1 "*Issuing Inspection Reports"* of the former Prevention Division *Policy and Procedure Manual.*

**APPLICATION:**

**RE: Orders – Contents and Process** **ITEM: D12-188-1**

# BACKGROUND

## 1. Explanatory Notes

Section 188 sets out the contents and process requirements in relation to orders. Subject to the terms of the relevant sections, these requirements apply to all the powers to issue orders under Part 3. They are not limited to orders issued under the Board's general authority in section 187.

## 2. The Act

Section 188:

(1) An order may be made orally or in writing but, if it is made orally, must be confirmed in writing as soon as is reasonably practicable.

(2) An order may be made applicable to any person or category of persons and may include terms and conditions the board considers appropriate.

(3) If an order relates to a complaint made by a person to the board or an officer, a copy of the order must be given to that person.

(4) An officer of the board may exercise the authority of the board to make orders under this Part, subject to any restrictions or conditions established by the board.

# POLICY

After an inspection, the Board officer must complete a report, but its completion may be deferred until any required investigation is completed. This report may contain one or more orders, or no orders, depending on whether violations of the regulations were observed and the number and type of any observed violations. If an officer has observed no violations, this will be stated in the report.

Where possible, the officer will hold a post-inspection conference with management having responsibility and authority to comply with the orders.

The worker representative who accompanied the inspection will be invited to the conference. If the worker representative normally designated for this purpose has been unable to attend the inspection, the designated worker representative will be invited as well, if now available. Other parties involved may also be invited at the discretion of the officer. The purpose of the conference is to ensure that the parties understand the orders.

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| **EFFECTIVE DATE:** | October 1, 1999 |
| **AUTHORITY:** | s.188, *Workers Compensation Act* |
| **CROSS REFERENCES:** | s.187, *Workers Compensation Act* |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes. |
| **APPLICATION:** | |

**RE: Stop Work Orders** **ITEM: D12-191-1**

# BACKGROUND

## 1. Explanatory Notes

WorkSafeBC issues stop work orders to protect the health and safety of workers when they will be at risk until the employer complies with the *Act* and Regulation. Stop work orders are a compliance tool, similar to OHS Compliance Orders.

WorkSafeBC has a number of tools to address non-compliance with the Regulation and Part 3 of the *Act*. If these tools effectively protect workers in the circumstances, then a stop work order will not be necessary.

The *Act* provides that a stop work order may be issued when:

(a) there are reasonable grounds to believe that there is a high risk of serious injury, serious illness or death at a workplace, or

(b) an employer

(i) violates a section of the *Act* or Regulation;

(ii) within the last 12 months, had previously violated the same section and failed to comply with the resulting order; and

(iii) there are reasonable grounds to believe that there is a risk of serious injury, serious illness or death.

The *Act* also provides that, if a stop work order is issued, WorkSafeBC may also stop work at other or all workplaces of an employer (a "stop operations order") if WorkSafeBC has reasonable grounds to believe that:

(a) the same or similar unsafe working or workplace conditions exist, or

(b) would exist,

at the other workplaces.

This policy provides guidance regarding:

(a) when to consider a stop work order,

(b) when a stop work order is appropriate,

(c) the scope of a stop work order (area covered),

(d) the use of a stop operations order, and

(e) the duration of a stop work order.

**2. The Act**

Section 191:

(1) The Board, in accordance with subsection (1.1), may order that

(a) work at a workplace or any part of a workplace stop until the order to stop work is cancelled by the Board, and

(b) if the Board considers this is necessary, the workplace or any part of the workplace be cleared of persons and isolated by barricades, fencing or any other means suitable to prevent access to the area until the danger is removed.

(1.1) The Board may make an order under subsection (1)

(a) if the Board has reasonable grounds for believing there is a high risk of serious injury, serious illness or death to a worker at the workplace, or

(b) if

(i) an employer

(A) has failed to comply with a provision of this Part or the regulations, and

(B) within the 12 month period immediately preceding the failure to comply as set out in clause (A), has failed to comply with

(I) the same provision described in clause (A), and

(II) an order respecting the failure to comply described in subclause (I), and

(ii) the Board has reasonable grounds for believing there is a risk of serious injury, serious illness or death to a worker at the workplace.

(1.2) If the Board makes an order under subsection (1), the Board, with respect to another workplace or any part of another workplace whose employer is the same as the employer at the workplace or any part of the workplace in respect of which the order under subsection (1) was made, may make an order, in accordance with subsections (1.3) and (1.4),

(a) that

(i) work at the other workplace or any part of the other workplace stop until the order to stop work is cancelled by the Board, and

(ii) if the Board considers this is necessary, the other workplace or any part of the other workplace be cleared of persons and isolated by barricades, fencing or any other means suitable to prevent access to the area until the danger is removed, or

(b) prohibiting the employer from starting work at the other workplace or any part of the other workplace.

(1.3) The Board may make an order under subsection (1.2) if the Board has reasonable grounds for believing,

(a) with respect to an order made under subsection (1.2)(a), that, at the other workplace or any part of the other workplace in respect of which that order is made, the same or similar unsafe working or workplace conditions exist as at the workplace or any part of the workplace in respect of which the order under subsection (1) was made, or

(b) with respect to an order made under subsection (1.2)(b), that, at the other workplace or any part of the other workplace in respect of which that order is made, the same or similar unsafe working or workplace conditions would exist as at the workplace or any part of the workplace in respect of which the order under subsection (1) was made.

(1.4) In making an order under subsection (1.2), the Board is not required to specify the address of the other workplace or any part of the other workplace in respect of which the order is made.

(2) If an order is made under subsection (1)(b) or (1.2)(a)(ii), an employer, supervisor or other person must not require or permit a worker to enter the workplace or part of the workplace that is the subject of the order, except for the purpose of doing work that is necessary or required to remove the danger or the hazard and only if the worker

(a) is protected from the danger or the hazard, or

(b) is qualified and properly instructed in how to remedy the unsafe condition with minimum risk to the worker's own health or safety.

(3) Despite section 188(1), an order under this section

(a) may only be made in writing, and

(b) must be served on the employer, supervisor or other person having apparent supervision of the work or the workplace.

(4) An order under this section expires 72 hours after it is made, unless the order has been confirmed in writing by the Board.

# POLICY

### A. When to Consider a Stop Work Order

The *Act* says that WorkSafeBC may consider a stop work order when:

(a) there are reasonable grounds to believe that there is a high risk of serious injury, serious illness or death at a workplace (high risk is defined in Policy D12-196-2), or

(b) an employer

(i) violates a section of the *Act* or Regulation;

(ii) within the last 12 months, had previously violated the same section and failed to comply with the resulting order; and

(iii) there are reasonable grounds to believe that there is a risk of serious injury, serious illness or death.

An officer will determine whether there are reasonable grounds for a stop work order based on knowledge and experience along with any immediately available advice and assistance. An officer may make a decision on the spot to immediately protect workers and then make further inquiries afterwards.

When there are reasonable grounds for a stop work order, WorkSafeBC must then consider whether a stop work order is appropriate in the circumstances as set out in **B** below.

### B. Appropriateness of a Stop Work Order

A stop work order is not necessary in every case where one is possible under the *Act*. WorkSafeBC will generally issue a stop work order when the safety concern cannot be

quickly remedied and other measures are insufficient to protect the workers in that workplace. The following are some examples of the circumstances:

(a) The equipment needed to comply is not at the workplace.

*Work cannot safely continue until the employer obtains the needed equipment.*

(b) The employer has not trained the workers to perform the work safely.

*Work cannot safely continue until the employer gives workers the necessary training.*

(c) The employer does not have an effective system of supervision in place to ensure that work is performed safely.

*Work cannot safely continue until the employer implements an effective system of supervision.*

(d) The documentation necessary to determine whether the work is safe is unavailable.

*This could include things such as a hazardous materials survey and confirmation in writing, instructions for an excavation, or confined space hazard assessment and entry procedures.*

(e) The employer has a history of non-compliance with OHS Compliance Orders.

*WorkSafeBC may not be able to rely on the employer to remedy the violation before resuming work and it may be necessary to stop work until the employer demonstrates that they have taken the required actions.*

(f) The employer has expressed the intent not to comply with OHS Compliance Orders.

*WorkSafeBC will be unable to rely on the employer to address the violation and work must be stopped until WorkSafeBC can verify that the employer has taken the required precautions.*

(g) The employer cannot be reached or identified and work is pending that will pose a high risk to workers.

*For example, a demolition site contaminated with asbestos would pose a high risk to untrained and unprotected workers. It may be necessary to issue a stop work order at the workplace until WorkSafeBC can verify that the employer has taken the required precautions.*

If a stop work order is appropriate, WorkSafeBC must then consider:

(a) the scope of that stop work order as set out in **C**, and

(b) whether a multiple workplace stop work order is appropriate as set out in **D**.

## C. Scope of a Stop Work Order (Area of Workplace Involved)

If WorkSafeBC decides to issue a stop work order, it must carefully consider the scope of the order.

The *Act* provides that a stop work order may apply to a workplace or any part of the workplace.

The scope of a stop work order must be sufficient to ensure that the work posing a risk to workers is halted. However, the stop work order should not impact work or those parts of the workplace where the risk underlying the stop work order is not evident and work is being done in a safe manner.

*The following are two examples of situations where a limited scope order might be appropriate:*

*(1) A large construction site may have a variety of work practices occurring simultaneously, including earth moving work in one section of the site, and assembly of formwork in another section of the site. If WorkSafeBC observes a failure to wear fall protection while assembling formwork, the stop work order should be restricted to that part of the workplace where formwork assembly is occurring.*

*(2) A warehouse may have an area where unsafe stacking of items may pose a significant hazard to workers in one area of the warehouse but other parts of the warehouse would be unaffected. In that case, a stop work order would be restricted to the area where the hazard exists.*

## D. Stop Operations Order

The *Act* provides that WorkSafeBC may stop work or prohibit work from starting at other workplaces (or parts of those workplaces) of the same employer who was issued a stop work order. This is referred to in this policy as a stop operations order. The *Act* also provides that WorkSafeBC must have reasonable grounds for believing that the same or similar unsafe working or workplace conditions exist, or would exist, at the other workplaces.

WorkSafeBC will consider the following in relation to the *Act* requirements for a stop operations order:

(a) Same employer:

The employer must be the same employer at each workplace where the stop work order (or prohibition from starting work) will take effect. In multiple employer workplaces, WorkSafeBC must ensure that the stop work order applies only to the same employer or those parts of the workplace where the employer has (or would have) responsibility for unsafe working or workplace conditions.

(b) Same or similar unsafe working or workplace conditions

To determine whether there are reasonable grounds to believe that unsafe working or workplace conditions at other workplaces are, or would be, the same or similar in respect to the stop work order made on the employer, WorkSafeBC will consider the following factors:

- Whether the employer performs, or would perform, substantially the same or similar work at other workplaces.
- Whether the employer uses, or would use, the same or similar work practices or equipment at other workplaces.
- Whether the same or similar working or workplace conditions exist, or would exist, at other workplaces.

## E. Duration of a Stop Work Order

Once a stop work order is imposed, the duration of the stop work order will vary depending on the circumstances. WorkSafeBC may cancel a stop work order as soon as the employer has remedied the unsafe working or workplace conditions and a stop work order is no longer required to protect workers. In some circumstances, a stop work order could be cancelled within minutes.

*For example, WorkSafeBC may issue a stop work order to prohibit work in a stairway under construction, due to the risk of collapse. WorkSafeBC could then cancel the order later that day after the employer obtained an engineering report and took the remedial action recommended in the report.*

In order for WorkSafeBC to cancel a stop operations order, the employer must demonstrate that the employer has remedied the unsafe working or workplace conditions at all workplaces to which the stop work order applies.

In order for WorkSafeBC to cancel a stop operations order prohibiting work from starting at another workplace, the employer must demonstrate that it has taken the appropriate actions to ensure that the unsafe working or workplace conditions will not arise at that other workplace.

## PRACTICE

The *Act* requires that a stop work order must be in writing. In most cases, WorkSafeBC will initially post a handwritten stop work order placard at the site before providing an inspection report containing the stop work order.

The *Act* provides that a stop work order expires after 72 hours unless the order has been confirmed in writing by the Board. OHS Guideline G-D12-188(4)-2 states that the Senior Vice President, Operations, and Vice President, Prevention Services have the authority to**:**

(a) confirm a stop work order beyond 72 hours, and

(b) approve a stop operations order.

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| **EFFECTIVE DATE:** | January 1, 2016 |
| **AUTHORITY:** | s.191, *Workers Compensation Act* |
| **CROSS REFERENCES:** | |
| **HISTORY:** | Amended effective January 1, 2016 to change the paragraph order in the Explanatory Notes and make wording changes to sections D (Stop Operations Orders), E (Duration of a Stop Work Order) and the Practice section.<br>Interim policy effective May 27, 2015 applies to all inspections occurring on and after May 27, 2015 until the end of December 31, 2015. Amended effective May 27, 2015 following the amendments to Section 191 of the *Workers Compensation Act* to address:<br>(a) when to consider a stop work order,<br>(b) when a stop work order is appropriate,<br>(c) the scope of a stop work order,<br>(d) the use of a stop operations order, and<br>(e) the duration of a stop work order.<br>Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes. |
| **APPLICATION:** | This policy applies to all inspections that occur on and after January 1, 2016. |

**RE: Orders – Cancellation and Suspension of Certificates** **ITEM: D12-195-1**

# BACKGROUND

## 1. Explanatory Notes

Section 195(1) sets out circumstances in which the Board may cancel or suspend a certificate, or place conditions upon the use of a certificate issued under Part 3 or the regulations.

## 2. The Act

Section 195:

(1) If the Board has reasonable grounds for believing that a person who holds a certificate issued under this Part or the regulations has breached a term or condition of the certificate or has otherwise contravened a provision of this Part or the regulations, the Board may, by order,

(a) cancel or suspend the certificate, or

(b) place a condition on the use of that certificate that the Board considers is necessary in the circumstances.

(2) An order under this section suspending a certificate must specify the length of time that the suspension is in effect or the condition that must be met before the suspension is no longer in effect.

# POLICY

Section 195 applies to certificates issued by the Board to qualify persons to do a particular job, including:

- certificates issued to first aid attendants and instructors under section 159;
- certificates issued to blasters and instructors under section 163; and
- any similar certificate issued by the Board under Part 3 or the regulations.

The section also applies to such certificates issued on behalf of the Board by another person, such as a training agency, under an arrangement with the Board.

### (a) First Aid Certificates

A first aid certificate issued to a first aid attendant may be suspended, cancelled or have conditions placed upon its use where the first aid attendant engages in inappropriate conduct, including:

- smoking while assessing or treating an injured worker and/or while handling oxygen therapy equipment, or permitting others to do so;
- failure to use the assessment and injury treatment techniques outlined in first aid training courses unless conditions precluded them;
- conduct that poses an unreasonable threat to the safety and well-being of other workers or the public;
- removing themselves from being able to see or hear any summons for first aid at a workplace;
- abandonment of an injured worker after beginning assessment or treatment;
- refusal to treat an injured worker when acting as a designated first aid attendant; or
- treating or transporting an injured worker while impaired or under the influence of drugs or alcohol.

| | |
|---|---|
| **EFFECTIVE DATE:** | March 30, 2004 |
| **AUTHORITY:** | s.195, *Workers Compensation Act* |
| **CROSS REFERENCES:** | ss.159, 163, *Workers Compensation Act* |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br>Item developed to implement the *Workers Compensation (Occupational Health and Safety) Amendment Act*, 1998, effective October 1, 1999.<br>Policy revised to incorporate the parts of Policy No. 80.27 of the former Prevention Division *Policy and Procedure Manual* relating to circumstances when the WCB may suspend, cancel or place conditions on the certificate of a first aid attendant, effective March 30, 2004. |
| **APPLICATION:** | This policy applies to events occurring on or after March 30, 2004 that leads to the consideration of a suspension, cancellation or placement of a condition on certificates issued under Part 3 of the *Act*, or the regulations. |

**RE: Criteria for Imposing OHS Penalties** **ITEM: D12-196-1**

# BACKGROUND

## 1. Explanatory Notes

The main purpose of an administrative penalty ("OHS Penalty") is to motivate the employer receiving the penalty and other employers to comply with the *Act* and Regulation.

Employers and other workplace parties are required to comply at all times with the *Act* and Regulation to ensure a safe workplace. WorkSafeBC inspects workplaces and investigates incidents to determine whether workplace parties are in compliance and issues orders to remedy non-compliance with the *Act* and Regulation. An order does not initiate the obligation to comply and it is not sufficient simply to comply with WorkSafeBC orders after a violation, injury or disease has occurred.

In order to comply with the *Act*, employers and other workplace parties must read the *Act* and Regulation and take all reasonable steps to ensure that they are aware of their responsibilities. Ignorance of the requirements of the *Act* and Regulation is not a defence to a penalty.

Section 196(1) contains the legal authority for imposing an OHS Penalty. An OHS Penalty is different from an OHS Citation imposed under section 196.1 of the *Act*. Policy D12-196.1-1 addresses OHS Citations.

Section 196(3) states that an OHS Penalty must not be imposed if the employer establishes that it exercised "due diligence" to prevent the failure, non-compliance or conditions to which the penalty relates. Due diligence means taking all reasonable steps to comply. Policy D12-196-10 contains more information about "due diligence".

This policy sets out the criteria that WorkSafeBC uses to determine whether to impose an OHS Penalty based on a violation. There are two parts to the policy:

### A. Circumstances When WorkSafeBC Will Consider an OHS Penalty

The policy lists a set of circumstances in which WorkSafeBC must consider an OHS Penalty.

### B. Considering the Appropriateness of an OHS Penalty

When the circumstances in A (above) have occurred, the policy sets out a number of factors to be considered to determine whether an OHS Penalty is appropriate in the circumstances. If an employer is duly diligent, WorkSafeBC cannot impose an OHS Penalty and these factors do not need to be considered.

### 2. The Act

Section 196(1):

> The Board may, by order, impose on an employer an administrative penalty under this section if the Board is satisfied on a balance of probabilities that
>
> (a) the employer has failed to take sufficient precautions for the prevention of work related injuries or illnesses,
>
> (b) the employer has not complied with this Part, the regulations or an applicable order, or
>
> (c) the employer's workplace or working conditions are not safe.

Section 196(3):

> An administrative penalty under this section must not be imposed on an employer if the employer demonstrates that the employer exercised due diligence to prevent the circumstances described in subsection (1).

## POLICY

In this policy, the term violation refers to a violation of the Occupational Health and Safety Regulation (the "Regulation") or Part 3 of the *Workers Compensation Act* ("*Act*").

The main purpose of OHS Penalties is to motivate the employer receiving the penalty and other employers to comply with the *Act* and Regulations.

Employers and other workplace parties must comply with any orders issued. However, compliance with orders will not relieve an employer from the consequences of a violation, including OHS Penalties.

## A. Circumstances When WorkSafeBC Will Consider an OHS Penalty

WorkSafeBC must consider an OHS Penalty if an employer has committed a violation for which at least one of the following applies:

1. The violation resulted in a high risk of serious injury, serious illness or death;

   *Policy D12-196-2 sets out how to determine whether violations are high risk.*

2. The employer previously violated the same, or substantially similar, sections of the *Act* or Regulation (*repeat violations*) or the violation involves failure to comply with a previous order within a reasonable time;

   WorkSafeBC will generally consider violations at different fixed locations of a multi-site employer together to determine whether there have been repeat violations. However if a violation is a *location violation*, WorkSafeBC will only consider violations at that location to determine whether it qualifies as a repeat violation.

   A *location violation* is a violation by an employer with multiple fixed locations who, at the time of the violation, was doing all of the following:

   (a) effectively communicating with all locations regarding health and safety concerns;

   (b) providing adequate training to managers and others who implement site health and safety programs;

   (c) making local management accountable for health and safety; and

   (d) providing local management with sufficient resources for health and safety.

   *Policy D12-196-3 sets out how prior violations are treated following sale or re-organization of a firm.*

3. The employer intentionally committed the violation;

4. The employer violated section 177 of the *Act*;

   *Section 177 states that an employer or supervisor must not, by agreement, threat, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer, or a dependant of the worker, from reporting to the Board:*

   *(a) an injury or allegation of an injury, whether or not the injury occurred or is compensable under Part 1,*

   *(b) an illness, whether or not the illness exists or is an occupational disease compensable under Part 1,*

   *(c) a death, whether or not the death is compensable under Part 1, or*

   *(d) a hazardous condition or allegation of hazardous condition in any work to which this part applies.*

5. The employer violated section 186 of the *Act*;

   *Section 186 states:*

   *(1) A person must provide all reasonable means in that person's power to facilitate an inspection under this Part.*

   *(2) A person must not*

      *(a) hinder, obstruct, molest or interfere with, or attempt to hinder, obstruct, molest or interfere with, an officer in the exercise of a power or the performance of a function or duty under this Part or the regulations,*

      *(b) knowingly provide an officer with false information, or refuse to provide information required by an officer in the exercise of the officer's powers or performance of the officer's functions or duties under this Part or the regulations, or*

      *(c) interfere with any monitoring equipment or device in a workplace placed or ordered to be placed there by the Board.*

6. The employer violated a stop work order (section 191 of the *Act*) or stop use order (section 190 of the *Act*); or

   *Section 190 gives WorkSafeBC the authority to order equipment out of service. Section 191 gives WorkSafeBC the authority to order work to stop at all or part of a workplace, or at multiple workplaces.*

7. WorkSafeBC considers that the circumstances warrant a penalty.

## B. Considering the Appropriateness of an OHS Penalty

When considering the appropriateness of an OHS Penalty, WorkSafeBC must consider the following factors:

1. the potential for serious injury, illness or death in the circumstances, based on the available information at the time of the violation;

2. the likelihood that the penalty will motivate the employer (specific deterrence) and other employers (general deterrence) to comply in the future, taking into account one or more of the following:

   (a) the extent to which the employer was or should have been aware of the hazard,

   (b) the extent to which the employer was or should have been aware that the *Act* or Regulation were being violated,

   (c) the compliance history of the employer,

   (d) the effectiveness of the employer's overall approach to managing health and safety, and

   (e) whether other enforcement tools would be more appropriate;

3. any other relevant circumstances.

Section 196(3) of the *Act* says that a penalty cannot be imposed if the employer establishes that the employer exercised due diligence.

| | |
|---|---|
| **EFFECTIVE DATE:** | March 1, 2016 |
| **AUTHORITY:** | s.196(1), *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also High Risk Violations (Item D12-196-2), Transfer of OHS History (Item D12-196-3), Non-Exclusive Ways to Impose Financial Penalties (Item D12-196-4), and Due Diligence (Item D12-196-10) and s. 196(6) of the *Workers Compensation Act*), section 160 of the *Workers Compensation Act*. |
| **HISTORY:** | Policy amended effective March 1, 2016 to revise the circumstances when WorkSafeBC will consider a penalty and the factors considered to determine whether a penalty is appropriate.<br><br>Housekeeping amendments to Background Section effective May 27, 2015 to reflect changes to the *Workers Compensation Act*.<br><br>Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br><br>Effective October 29, 2003, an example in the policy that referenced section 20.11 of the Occupational Health and Safety Regulation was deleted to reflect the repeal of that section.<br><br>Effective July 1, 2003, a minor change was made to the second bullet of the policy, for congruency with Items D12-196-3 and D12-196-6.<br><br>Consequential changes were subsequently made to the restatement of section 196 to reflect the *Workers Compensation Amendment Act, 2002* and to the Explanatory Notes, the restatement of section 196 and the cross-references to reflect the *Workers Compensation Amendment Act (No. 2), 2002,* on March 3, 2003.<br><br>This Item was originally developed to implement the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998*, effective October 1, 1999. |
| **APPLICATION:** | This policy applies to all violations occurring on and after March 1, 2016. |

**RE: High Risk Violations** **ITEM: D12-196-2**

# BACKGROUND

## 1. Explanatory Notes

Policies D12-196-1 (Criteria for Imposing Penalties), D12-196-6 (Amount of Penalties), and D12-196-11 (OHS Warning Letters) require consideration of whether a violation involves high risk of serious injury, serious illness, or death ("high risk").

The *Workers Compensation Act* states that Occupational Health and Safety ("OHS") Penalties cannot be imposed if an employer establishes that it was duly diligent. Policy D12-196-11 confirms that OHS Warning Letters cannot be issued if an employer was duly diligent. Policy D12-196-10 discusses due diligence.

This policy sets out how WorkSafeBC will categorize a violation as high risk. Violations may be classified as high risk in one of two ways:

### A. Designated High Risk Violations

The first category are "designated high risk violations", ones that are automatically considered to be high risk because they regularly result in fatalities, serious injuries and serious illnesses. They generally give a worker little or no opportunity to avoid or minimize severe injury or death or occupational disease. The six items on the list are high risk violations.

### B. High Risk Criteria

Many violations that are not on the list of designated high risk violations may also be high risk.

The policy sets out criteria to determine whether violations (other than designated high risk ones) are high risk.

# POLICY

For ease of reference, in this policy:

(a) "high risk" refers to high risk of serious injury, serious illness or death; and

(b) "Regulation" refers to the Occupational Health and Safety Regulation.

This policy sets out how high risk is determined for the policies regarding occupational health and safety related penalties and warning letters. Violations in the six circumstances on the list of Designated High Risk Violations (A) are high risk. Determining whether other violations are high risk will depend on the High Risk Criteria (B).

## A. Designated High Risk Violations

Violations of the *Workers Compensation Act ("Act")* or Regulation relating to the following circumstances are high risk:

1. Entry into an excavation over 1.2 m (4 feet) deep contrary to the requirements of the Regulation.

2. Work at over 3 m (10 feet) without an effective fall protection system.

3. Entry into a confined space without pre-entry testing and inspection to verify that the required precautions have been effective at controlling the identified hazards.

4. Causing work disturbing material containing asbestos, or potentially containing asbestos, to be performed without necessary precautions to protect workers.

5. Hand falling or bucking without necessary precautions to protect workers from the tree that is being felled or bucked, or other affected trees.

   ***Explanatory note:*** *OHS Guideline G-D12-196-2 includes examples of circumstances where this would apply.*

6. Work in the vicinity of potentially combustible dust without the necessary precautions to protect workers.

### B. High Risk Criteria

When violations have occurred in circumstances that are not listed in A above, WorkSafeBC will determine whether the circumstances are high risk in each case on the basis of the available evidence concerning:

1. the likelihood of an incident or exposure occurring; and

2. the likely seriousness of any injury or illness that could result if that incident or exposure occurs.

***Explanatory note:*** *OHS Guideline G-D12-196-2 provides a list of violations that are likely to be high risk when applying the high risk criteria. Even though a violation is on that list, it must still be analyzed using the High Risk Criteria (B) in this policy, since not every instance will be high risk.*

## PRACTICE

For practice information, please refer to OHS Guideline G-D12-196-2.

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| | |
|---|---|
| **EFFECTIVE DATE:** | December 1, 2014 |
| **AUTHORITY:** | s. 196(1), *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also Criteria for Imposing OHS Penalties (D12-196-1), OHS Penalty Amounts (D12-196-6), OHS Warning Letters (D12-196-11) |
| **HISTORY:** | Housekeeping amendments to Background Section effective May 27, 2015 to reflect changes to the *Workers Compensation Act*.<br><br>Amended effective December 1, 2014 to create six designated high risk violations and revise the high risk criteria.<br><br>Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br><br>Item developed to implement the *Workers Compensation* (Occupational Health and Safety) *Act*, effective October 1, 1999. Effective July 1, 2003, at number 7 of the policy, the term “snags” was removed, and replaced with “dangerous trees”. |
| **APPLICATION:** | Policy change effective December 1, 2014 applies to all violations occurring on or after December 1, 2014.<br><br>Policy change effective July 1, 2003 applies to all orders, including orders imposing administrative penalties under section 196, issued on or after July 1, 2003. |

**RE: Transfer of OHS History** **ITEM: D12-196-3**

# BACKGROUND

## 1. Explanatory Notes

This policy provides that when the experience rating of an employer is transferred to another firm, the Occupational Health and Safety (OHS) history is also transferred.

# POLICY

When a firm is sold or reorganized, WorkSafeBC may transfer that firm's experience rating to the successor firm (see AP1-42-3 of the *Assessment Manual*).

For OHS purposes, if WorkSafeBC transfers the experience rating to the successor firm, WorkSafeBC will treat the original firm's OHS history, including prior violations and penalties, as part of the successor firm's history.

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| | |
|---|---|
| **EFFECTIVE DATE:** | March 1, 2016 |
| **AUTHORITY:** | s. 196(1), *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also Criteria for Imposing OHS Penalties (Item D12-196-1), OHS Penalty Amounts (D12-196-6), *Assessment Manual:* Transfer of Experience Rating AP1-42-3 |
| **HISTORY:** | Changes effective March 1, 2016 to update discussion of transferring OHS History and to remove references to location violations, now contained in Policy D12-196-1.<br><br>Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br><br>Effective October 29, 2003, an example referencing section 20.11 of the *Occupational Health and Safety Regulation* in the policy was deleted to reflect the repeal of that section.<br><br>Effective March 18, 2003, references to policy items in the former *Assessment Policy Manual* were replaced with references to policy items in the *Assessment Manual.* |
| **APPLICATION:** | This policy applies to all violations occurring on and after March 1, 2016. |

**RE: Non-Exclusive Ways to Impose Financial Penalties ITEM: D12-196-4**

# BACKGROUND

## 1. Explanatory Notes

This policy sets out the non-exclusive ways in which the Board may impose financial penalties if an employer does not comply with the occupational health and safety requirements in the *Act* and regulations.

## 2. The Act

Section 73(1):

> 73 (1) If
>
> (a) an injury, death or disablement from occupational disease in respect of which compensation is payable occurs to a worker, and
>
> (b) the Board considers that this was due substantially to
>
> (i) the gross negligence of an employer,
>
> (ii) the failure of an employer to adopt reasonable means for the prevention of injuries, deaths or occupational diseases, or
>
> (iii) the failure of an employer to comply with the orders or directions of the Board, or with the regulations made under Part 3 of this *Act*,
>
> the Board may levy and collect from that employer as a contribution to the accident fund all or part of the amount of the compensation payable in respect of the injury, death or occupational disease, to a maximum of $57,971.53.

Section 160(b):

> If an employer fails, neglects or refuses to install or maintain first aid equipment or service required by regulation or order, the Board may do one or more of the following:

(b) impose a special rate of assessment under Part 1 of this *Act*.

Section 196(1):

> The Board may, by order, impose on an employer an administrative penalty under this section if the Board is satisfied on a balance of probabilities that
>
> (a) the employer has failed to take sufficient precautions for the prevention of work related injuries or illnesses,
>
> (b) the employer has not complied with this Part, the regulations or an applicable order, or
>
> (c) the employer's workplace or working conditions are not safe.

## POLICY

The Board has authority under the *Act* to:

1. impose an administrative penalty under section 196(1),
2. levy and collect a contribution from an employer under section 73(1), and
3. impose a special rate of assessment under section 160(b).

---

| | |
|---|---|
| **EFFECTIVE DATE:** | March 24, 2010 |
| **AUTHORITY:** | |
| **CROSS REFERENCES:** | See also Assignment of Authority (Item D2-111-1), Criteria for Imposing OHS Penalties (Item D12-196-1), and Claim Cost Levies (Item D24-73-1) |
| **HISTORY:** | Housekeeping amendments to Background Section effective May 27, 2015 to reflect changes to the *Workers Compensation Act*.<br><br>This policy incorporates portions of, and replaces, Policy No. 1.4.2 "*Penalty Assessments and Levies*" of the former Prevention Division *Policy and Procedure Manual*.<br><br>Amended March 24, 2010 to delete the reference to the Vice-President, Prevention Division, make minor wording changes and add a cross-reference to Policy D2-111-1 which has been amended to address authority over claims cost levies. |
| **APPLICATION:** | |

**RE: OHS Penalty Amounts** **ITEM: D12-196-6**

# BACKGROUND

## 1. Explanatory Notes

WorkSafeBC may impose an administrative penalty ("OHS Penalty") on an employer for failure to comply with Part 3 of the *Act* and the Regulation, and under certain other conditions. Policy D12-196-1 and related policies identify when WorkSafeBC will consider an OHS Penalty. Section 196(3) provides that WorkSafeBC must not impose an administrative penalty where the employer establishes that it exercised due diligence.

Section 196(2) sets out the maximum OHS Penalty, which is currently $662,102.49. This maximum is adjusted under section 25.2 of the *Act* on January 1 of each year.

The *Act* does not specify how to calculate the amount of an OHS Penalty. This policy sets out how to calculate these amounts.

## 2. The Act

Section 196(2):

> An administrative penalty which is greater than $662,102.49 must not be imposed under this section.

# POLICY

This policy determines the amounts of administrative penalties, referred to as OHS Penalties.

## 1. Payroll Used

For the purposes of this policy, the *penalty payroll* will ordinarily be determined as set out in (a) below. Item (b) below identifies circumstances in which WorkSafeBC will use less than the total payroll of the employer to determine the *penalty payroll*. The *penalty payroll* is used in Item 2(a) below as part of the calculation to determine the *basic amount* of the penalty.

**(a) Penalty Payroll Calculation**

(i) The *penalty payroll* is

(A) the assessable payroll for the full calendar year immediately preceding the year in which the incident giving rise to the penalty occurred; or

(B) WorkSafeBC's estimate of a value for the employer's assessable payroll for a full calendar year, based on the best information available at the time the penalty is imposed, if the preceding year's assessable payroll is:

(1) non-existent or unknown,

(2) not available due to the employer's use of a deposit account,

(3) based on less than a full calendar year, or

(4) a WorkSafeBC estimate of payroll.

The estimate must not be less than any estimate made previously by WorkSafeBC of the employer's assessable payroll for the calendar year. For certainty, any estimate cannot result in a penalty below the minimum amount.

**(b) Multiple Fixed Locations and Divisional Registration**

An employer may be divisionally registered (AP1-38-1), have one or more fixed locations or have one or more classification units (AP1-37-2). Divisions or classification units may themselves have multiple fixed locations.

Where a firm has more than one permanent location or is divisionally registered (AP1-38-1), WorkSafeBC will determine the penalty payroll based on the lowest applicable amount of the following where the violation occurred:

(i) fixed location,

(ii) division, or

(iii) classification unit,

if the employer promptly provides:

(i) the necessary payroll information for that location, classification or division to WorkSafeBC (signed by a professional accountant, the President or a senior manager of the employer) and cooperates in any audit that WorkSafeBC considers necessary; and

(ii) sufficient evidence to establish that, at the time of the violation, the employer was doing all of the following at the applicable location, classification or divisional level:

(A) effectively communicating with all locations regarding health and safety concerns,

(B) providing adequate training to managers and others who implement site health and safety programs,

(C) making local management accountable for health and safety, and

(D) providing local management with sufficient resources for health and safety.

## 2. Calculating the basic amount of the penalty

The *basic amount* of an OHS penalty will be determined by using the *penalty payroll* calculation in (a) and, as applicable, applying (b) multipliers or (c) variation factors or both.

### (a) Calculation based on penalty payroll

WorkSafeBC will multiply the *penalty payroll* by 0.5%, with a minimum amount of $1,250 and a maximum of half of the statutory maximum.

### (b) Multipliers

| **If any of the circumstances on which the penalty is based:** |
|---|
| **(i) are high risk (item 1 in D12-196-1, defined in D12-196-2)** |
| **(ii) are intentional (item 3 in D12-196-1)** |
| **(iii) involve section 186 obstruction (item 5 of D12-196-1)** |
| **(iv) involve section 177 (item 4 of D12-196-1)** |
| **(v) involve breaching a stop work or stop use order (item 6 of D12-196-1)** |
| **Multiply the amount from (a) by 2 for each one that applies and add the results together.** |

For example, if circumstances (i), (ii) and (v) all apply, WorkSafeBC will multiply the amount in (a) by 6.

**(c) Variation factors**

This policy is designed to ensure that employers of similar size generally receive similar penalty amounts in similar cases. In exceptional circumstances only, the resulting amount after having applied (a) and any applicable multiplier(s) in (b) may be reduced or increased by up to 30%. Circumstances that are adequately addressed by other parts of this policy are not exceptional circumstances.

## 3. Repeat penalties

(a) An OHS Penalty will be imposed as a "repeat penalty" where there is a *prior similar penalty*.

(b) A *prior similar penalty* is any previous penalty which:

(i) is for a violation that is the same as, or substantially similar to, one or more of the violation(s) that has initiated the penalty for which the amount is being calculated;

(ii) the violations occurred within 3 years of one another; and

(iii) at least 14 days prior to the date of the violation giving rise to the penalty for which the amount is being calculated, WorkSafeBC

(A) had imposed a penalty for same or substantially similar violation referenced in (i), or

(B) provided notice to the employer that a penalty was being considered for the same or substantially similar violation referenced in (i),

(c) For paragraph (b), the date of a violation is the date of the incident.

(d) WorkSafeBC may provide notice under paragraph (b)(iii)(B) verbally or in writing, in person, by telephone, by mail, fax, email or other method.

## 4. Calculating the amount of a repeat penalty

(a) Where there are one or more *prior similar penalties*, WorkSafeBC will calculate the amount of a "repeat penalty" as follows:

(i) Calculate the *basic amount* of the penalty using Item 2 of this Policy.

(ii) Multiply the *basic amount* by $2^n$, where n is the number of *prior similar penalties*. For example, an OHS Penalty with a *basic amount* of $1,250 with three *prior similar penalties* ($2^3$) would be: $1,250 x (2x2x2) = $10,000.

The following table further illustrates the repeat penalty calculations:

| **Number of *Prior Similar Penalties*** | **Multiply the *basic amount* by:** |
|---|---|
| 1 | 2 |
| 2 | 4 |
| 3 | 8 |
| 4 | 16 |
| More than 4 | Continue to use $2^n$ |

(iii) Where there are at least two prior similar penalties and the employer's response to previous violations causes WorkSafeBC to believe that a higher level of motivation is required, WorkSafeBC may multiply the result of (ii) by 2.

## 5. Recovery of potential or actual financial benefits obtained from non-compliance

WorkSafeBC may make a reasonable estimate of the amount of any potential or actual financial benefit, such as cost saving or profit, obtained by the employer from committing the violation and add that amount to the penalty amount determined above. That amount forms part of the administrative penalty.

Potential financial benefits include those that would have occurred if the violation had not been discovered.

WorkSafeBC may consider adding these amounts when the penalty amount is insufficient to motivate the employer in light of the potential or actual financial benefits of non-compliance.

These amounts form part of the penalty and the total remains subject to the statutory maximum.

## 6. Discretionary Penalties

In some cases, where the circumstances warrant, WorkSafeBC may impose a discretionary penalty, which is a larger penalty than one calculated based on payroll. Unlike payroll based penalties, discretionary penalty amounts focus on reflecting the gravity of the circumstances and the need to motivate the employer and other employers to comply.

WorkSafeBC may impose a discretionary penalty up to the statutory maximum where:

(i) the employer has committed a high risk violation (defined in D12-196-2);

(ii) the employer committed the violation intentionally or with reckless disregard;

(iii) a worker has died or suffered serious permanent impairment as a result of the violation; and

(iv) the President or delegate(s) have granted authorization to impose a discretionary penalty.

A document signed by the President or delegate will be sufficient evidence that authorization was granted.

A discretionary penalty that is less than the penalty based on payroll may not be imposed.

Review Division or WCAT may vary the amount of a discretionary penalty or substitute a payroll based penalty in the review or appeal process.

Review Division may impose a discretionary penalty on review if the above conditions are met, but the approval of the President or delegate under item (iv) is not required.

## 7. Statutory maximum

WorkSafeBC will not impose an individual OHS penalty greater than the statutory maximum in effect at the time of the violation giving rise to the penalty.

## 8. Multiple Penalties

Ordinarily WorkSafeBC will impose only one penalty for violations arising out of the same incident or inspection. However, WorkSafeBC may impose separate penalties for distinct violations arising in the same circumstances as other violations that will result in a penalty. The criteria in Policy D12-196-1 would apply to each.

# PRACTICE

## 1. Examples of Penalty Multipliers

The following are examples of the penalty payroll calculation from Item 2(a) and the application of multipliers from Item 2(b). This table is for reference only. All amounts will be calculated according to the Policy.

| **Penalty Payroll** | **Calculation from Item 2(a)** | **Number of applicable circumstances from Item 2(b)** | | |
|---|---|---|---|---|
| | | **One** | **Two** | **Three** |
| **Up to $250,000** | $1,250 | $2,500 | $5,000 | $7,500 |
| **$500,000** | $2,500 | $5,000 | $10,000 | $15,000 |
| **$1,000,000** | $5,000 | $10,000 | $20,000 | $30,000 |
| **$2,500,000** | $12,500 | $25,000 | $50,000 | $75,000 |
| **$5,000,000** | $25,000 | $50,000 | $100,000 | $150,000 |
| **$10,000,000** | $50,000 | $100,000 | $200,000 | $300,000 |
| **$20,000,000** | $100,000 | $200,000 | $400,000 | $600,000 |
| **$30,000,000** | $150,000 | $300,000 | $600,000 | **Stat Max** |
| **$40,000,000** | $200,000 | $400,000 | **Stat Max** | |
| **$50,000,000** | $250,000 | $500,000 | **Stat Max** | |
| **$63,741,560 or more** | $331,051.24 (half statutory max) | **Stat Max ($662,102.49)** | | |

## 2. Examples of Application of the Repeat Penalty Provisions

*Example 1: You are calculating the penalty to be imposed for a violation that occurred less than 14 days after another similar violation that also resulted in a penalty. The employer has no other prior penalties for the same violation.*

Calculate the *basic amount* of the penalty in accordance with Item 2 of this policy. After applying Item 3 of this policy, you determine that the current penalty is not a "repeat penalty". The penalty will therefore be imposed based on the table amount with variation plus any amounts added under Item 5 of this policy.

*Example 2: You are calculating the penalty to be imposed for a violation that occurred less than 14 days after another similar violation that also resulted in a penalty. The employer has one other prior penalty for the same violation for which more than 14 days' notice was given before the current violation.*

Calculate the *basic amount* of the penalty in accordance with Item 2 of this policy. After applying Item 3 of this policy, you determine that the current penalty is a "repeat penalty". There are two prior similar penalties; however, only one meets the requirements to be considered as a "prior similar penalty". Using Item 4, you determine that one prior similar penalty will result in the amount that you calculated for the penalty being multiplied by two.

*Example 3: You are calculating the penalty to be imposed for a violation. The employer has three other prior penalties for the same violation for which more than 14 days' notice was given before the current violation.*

Calculate the *basic amount* of the penalty in accordance with Item 2 of this policy. After applying Item 3 of this policy, you determine that the current penalty is a "repeat penalty". The three prior penalties each meet the requirements to be considered as a "prior similar penalty". Using Item 4, the basic amount will be successively doubled (multiplied by two) for each of the three prior similar penalties, resulting in a penalty of eight times the basic amount. For example, if the basic amount were $2,500, the resulting penalty would be $20,000.

The following table provides examples of the repeat penalty calculations from item 4. The table is for reference only. All amounts will be calculated according to the Policy.

| **Penalty Payroll** | **Calculation from Item 2 with no multipliers and no variation** | **Number of prior similar penalties** | | |
|---|---|---|---|---|
| | | **One (2x)** | **Two (4x)** | **Three (8x)** |
| **Up to $250,000** | $1,250 | $2,500 | $5,000 | $10,000 |
| **$500,000** | $2,500 | $5,000 | $10,000 | $20,000 |
| **$1,000,000** | $5,000 | $10,000 | $20,000 | $40,000 |
| **$2,500,000** | $12,500 | $25,000 | $50,000 | $100,000 |
| **$5,000,000** | $25,000 | $50,000 | $100,000 | $200,000 |
| **$10,000,000** | $50,000 | $100,000 | $200,000 | $400,000 |
| **$20,000,000** | $100,000 | $200,000 | $400,000 | **Stat Max** |
| **$30,000,000** | $150,000 | $300,000 | $600,000 | **Stat Max** |
| **$40,000,000** | $200,000 | $400,000 | **Stat Max** | |
| **$50,000,000** | $250,000 | $500,000 | **Stat Max** | |
| **$63,741,560 or more** | $331,051.24 (half statutory max**)** | **Stat Max ($662,102.49)** | | |

**EFFECTIVE DATE:** July 4, 2017
**AUTHORITY:** s. 196(2), *Workers Compensation Act*
**CROSS REFERENCES:** See also Criteria for Imposing OHS Penalties (Item D12-196-1), Transfer of OHS History (D12-196-3), OHS Penalties - Due Diligence (Item D12-196-10).

**HISTORY:**

On October 18, 2017, the application statement was revised to clarify that the July 4, 2017 amendments do not apply to violations occurring before March 1, 2016 which have resulted in administrative penalties. Violations occurring before March 1, 2016 will still be considered as part of an employer's compliance history for the purposes of determining a repeat penalty amount.

Amendments effective July 4, 2017 to provide clarification on how to calculate a repeat penalty.

Housekeeping amendment effective April 15, 2016 to provide additional practice information regarding calculation of repeat penalty amounts.

Amendments effective March 1, 2016 including changes to penalty amount calculations, discretionary penalties, cost savings and profits and repeat penalties.

Housekeeping changes effective September 15, 2010 to correct paragraph reference in item 4(4) and make formatting changes.

Effective January 2, 2010 a change was made to

(a) Item 1 to correct a typographical error in the Category A penalty table, and
(b) Item 4 so that an administrative penalty will be imposed as a "repeat penalty" where:
    (i) it is for a violation that is the same as, or substantially similar to, a prior violation for which a penalty has been imposed;
    (ii) the violations occurred within 3 years of one another; and
    (iii) at least 14 days prior to the date of the violation giving rise to the repeat penalty, WorkSafeBC
        (1) had imposed a penalty for the prior violation, or
        (2) provided notice of a potential penalty for the prior violation.

The amendments made effective January 2, 2010 applied to all penalties where a penalty was imposed on or after the effective date of the changes. Transitional provisions applied to penalties within the appeal period, before Review Division or before WCAT on the effective date.

Transitional Provision for Repeat Penalty Calculation:
Penalties within the appeal period or under review or appeal on the effective date of the policy change will be subject to the policy in effect when originally imposed, with the additional requirement that a prior penalty will only be used to increase the amount of a repeat penalty, if at least 14 days prior to the date of the violation giving rise to the repeat penalty, WorkSafeBC

(a) had imposed a penalty for the prior violation, or
(b) provided notice of a potential penalty for the prior violation.

Effective March 25, 2009 a change was made to base the penalty calculation on the employer's assessable payroll for the full calendar year immediately preceding the year in which the incident that gave rise to the penalty occurred. Effective March 25, 2009 a change was made to allow WorkSafeBC to estimate payroll in certain situations. The amendments made effective March 25, 2009 applied to all decisions, including appellate decisions, made on or after the effective date of the changes.

Effective October 29, 2003, an example referencing section 20.11 of the Occupational Health and Safety Regulation in the policy was deleted to reflect the repeal of that section.

Effective July 1, 2003 a minor change was made at number four of the policy, to correct the reference of section 20.22 to section 20.11 of the Occupational Health and Safety Regulation.

Consequential changes were subsequently made throughout the Item to implement the *Workers Compensation Amendment Act (No. 2), 2002*, on March 3, 2003.

This Item was originally developed to implement the *Workers Compensation* (*Occupational Health and Safety*) *Amendment Act*, 1998, effective September 15, 2000.

**APPLICATION:**

This policy applies to all administrative penalty decisions for violations occurring on or after March 1, 2016. This policy also applies to all appellate decisions made on or after July 4, 2017 with respect to violations occurring on or after March 1, 2016.

**RE: OHS Penalties & Claims Cost Levies — Effect of Application for Stay at Review Division** **ITEM: D12-196-7**

# BACKGROUND

## 1. Explanatory Notes

This policy addresses administrative penalties imposed pursuant to section 196 of the *Act* and claims cost levies imposed pursuant to section 73(1) of the *Act*.

An administrative penalty or claims cost levy must be paid unless a stay is granted by the Chief Review Officer of the Review Division, or the Workers' Compensation Appeal Tribunal.

This policy sets out limits on collection while the decision on an application for a stay is pending at Review Division.

## 2. The Act

Section 223:

> (1) If a person fails to pay an amount owed to the Board under this Part [Part 3], the Board may,
>
> (a) if the person is an employer, direct that the amount be levied on the employer by way of an assessment, and
>
> (b) in any case, issue a certificate for the amount owed and file that certificate in the Supreme Court.
>
> (2) An assessment under subsection (1) (a) is deemed to be an assessment under Part 1 of this *Act* and may be levied and collected under and in accordance with that Part.
>
> (3) A certificate filed under subsection (1) (b) has the same effect, and all proceedings may be taken on it by the Board, as if it were a judgment of the court for the recovery of a debt of the amount stated in the certificate against the person named in it.

Section 96.2(5)

> Unless, on application, the chief review officer orders otherwise, the filing of a request for a review under subsection (3) does not operate as a stay or suspend the operation of the decision or order under review.

Section 96.2(4)

> On application, and where the chief review officer is satisfied that
>
> (a) special circumstances existed which precluded the filing of a request for review within the time period required in subsection (3) [45 days], and
>
> (b) an injustice would otherwise result,
>
> the chief review officer may extend the time to file a request for review even if the time to file has expired.

Section 244

> Unless the appeal tribunal orders otherwise, the filing of a notice of appeal under section 242 does not operate as a stay or affect the operation of the decision or order under appeal.

## POLICY

If an employer has applied to the Chief Review Officer for a stay under section 96.2(5) relating to an administrative penalty or claims cost levy, WorkSafeBC will not collect the administrative penalty or claims cost levy by assessment**,** or take any additional steps to collect by garnishment, or writ of seizure and sale until the Chief Review Officer has decided the application or the review is concluded, whichever occurs first.

This does not apply to a stay request on a request for review filed after the time to file has expired unless the Chief Review Officer grants an application under s. 96.2(4) to extend the time to file a request for review.

## PRACTICE

This policy allows WorkSafeBC to register a certificate with the Court and register the debt against an employer's land while a stay request is pending. This would generally only occur when WorkSafeBC identifies a significant risk of loss.

**EFFECTIVE DATE:** March 1, 2013
**AUTHORITY:** s. 196(5), *Workers Compensation Act*
**CROSS REFERENCES:** ss. 96.2(5), 223(1), 244, *Workers Compensation Act*
**HISTORY:** Housekeeping changes effective September 15, 2015 to reflect that, as of that date, a request for review of a WorkSafeBC decision or order on an occupational health and safety or claims cost levy matter must be submitted to the Review Division within 45 days of the date the decision or order was made.

Amended March 1, 2013 to specify the court proceedings affected by an application for a stay, to include claims cost levies and to address late requests for review.

Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.

Item developed to implement the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998,* effective October 1, 1999. Consequential changes subsequently made to the statement of the *Act* and to the POLICY statement to reflect the *Workers Compensation Amendment Act (No. 2) 2002*, effective March 3, 2003.

**APPLICATION:** This policy applies to all applications for stay requests of penalties or claims cost levies made to Review Division on or after the effective date.

For stay requests on penalties made before the effective date, the policy in effect at that time applies, with two modifications to provide that the limits on collection:

- will end when the Chief Review Officer has decided the application, or the review is concluded, whichever occurs first, and
- will not apply to a stay request on a request for review filed after the time to file has expired unless the Chief Review Officer grants an application under s. 96.2(4) to extend the time to file a request for review.

**RE: Administrative Penalties – Payment of Interest on Successful Appeal** **ITEM: D12-196-8**

# BACKGROUND

## 1. Explanatory Notes

Section 196(6) requires the payment of interest where an administrative penalty is reduced or cancelled on appeal.

## 2. The Act

Section 196(6):

> If an administrative penalty under this section is reduced or cancelled by a Board decision, on a review requested under section 96.2 or on an appeal to the appeal tribunal under Part 4, the Board must
>
> (a) refund the required amount to the employer out of the accident fund, and
> (b) pay interest on that amount calculated in accordance with the policies of the board of directors.

# POLICY

The policies governing the payment of interest are set out in policy in Item AP1-39-2 of the *Assessment Manual*.

---

**EFFECTIVE DATE:** March 3, 2003
**AUTHORITY:** s.196(6), *Workers Compensation Act*
**CROSS REFERENCES:**
**HISTORY:** Housekeeping amendments to Background Section effective May 27, 2015 to reflect changes to the *Workers Compensation Act*.

Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.

Item developed to implement the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998*, effective October 1, 1999. Consequential changes subsequently made to the Explanatory Notes and to the restatement of section 196(6) to reflect the *Workers Compensation Amendment Act (No. 2), 2002*, on March 3, 2003.

**APPLICATION:**

**RE: Administrative Penalties – Prosecution Following Penalty** **ITEM: D12-196-9**

# BACKGROUND

## 1. Explanatory Notes

An employer may either be required to pay an administrative penalty in respect of a violation or prosecuted under the *Act* for the violation, but not both.

## 2. The Act

Section 196(7):

> If an administrative penalty under this section is imposed on an employer, the employer must not be prosecuted under this *Act* in respect of the same facts and circumstances upon which the Board based the administrative penalty.

# POLICY

Once a prosecution under the *Act* has been commenced against an employer in respect of a violation, the Board will not impose an administrative penalty. A prosecution is "commenced" for this purpose, when an information is laid pursuant to the *Offence Act.*

An administrative penalty will not be imposed even if the prosecution does not proceed or is unsuccessful.

---

**EFFECTIVE DATE:** March 3, 2003
**AUTHORITY:** s.196(7), *Workers Compensation Act*
**CROSS REFERENCES:**
**HISTORY:** Housekeeping amendments to Background Section effective May 27, 2015 to reflect changes to the *Workers Compensation Act*. Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.

Item developed to implement the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998* effective October 1, 1999. Consequential changes subsequently made throughout the Item to reflect the *Workers Compensation Amendment Act (No. 2), 2002*, on March 3, 2003.

**APPLICATION:**

**RE: OHS Penalties – Due Diligence** **ITEM: D12-196-10**

# BACKGROUND

## 1. Explanatory Notes

The Board is authorized to impose administrative penalties on employers for failure to comply with Part 3 of the *Act* and the regulations, and under certain other conditions. Section 196(3) provides that an administrative penalty under this section must not be imposed if the employer establishes that it exercised due diligence to prevent the failure, non-compliance or conditions to which the penalty relates.

## 2. The Act

Section 196(3):

> An administrative penalty under this section must not be imposed on an employer if the employer establishes that the employer exercised due diligence to prevent the circumstances described in subsection (1).

# POLICY

The Board will consider that the employer exercised due diligence if the evidence shows on a balance of probabilities that the employer took all reasonable care. This involves consideration of what a reasonable person would have done in the circumstances. Due diligence will be found if the employer reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent, or if the employer took all reasonable steps to avoid the particular event.

In determining whether the employer has exercised due diligence under section 196(3), all the circumstances of the case must be considered.

| | |
|---|---|
| **EFFECTIVE DATE:** | March 3, 2003 |
| **AUTHORITY:** | s. 196(3), *Workers Compensation Act.* "Due diligence" is defined at common law by the courts. The standard set out in the POLICY section reflects the leading Supreme Court of Canada case - R. v. Sault Ste. Marie [1978] 85 DLR (3rd) 161. The requirements of the "due diligence" defence are open to re-interpretation by the courts. They may, therefore, be changed in future. Were this to happen, changes would be required to the Board's POLICY as well. |
| **CROSS REFERENCES:** | See also Supervisors (Item D3-117-1), Multiple-Employer Workplaces (Item D3-118-1), Owners (Item D3-119-1), Directors and Officers of a Corporation (Item D3-121-1), Overlapping Obligations (D3-123/124-1); Criteria for Imposing OHS Penalties (Item D12-196-1) |
| **HISTORY:** | Housekeeping amendments to Background Section effective May 27, 2015 to reflect changes to the *Workers Compensation Act*.<br><br>Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br><br>Item developed to implement the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998*, effective October 1, 1999. Consequential changes subsequently made to various parts of the Item to reflect the *Workers Compensation Amendment Act (No. 2), 2002*, on March 3, 2003. |
| **APPLICATION:** | This policy applies to all decisions to impose administrative penalties on and after March 3, 2003. |

**RE: OHS Penalty Warning Letters** **ITEM: D12-196-11**

# BACKGROUND

## 1. Explanatory Notes

As an alternative to imposing an administrative penalty, the Board (operating as WorkSafeBC) may send the employer a letter warning that further similar violations of the *Act* or Regulation could result in an administrative penalty.

Both administrative penalties and warning letters are tools intended to motivate employers to comply with the *Act* and Regulation.

WorkSafeBC may send warning letters when the grounds for considering an administrative penalty are met and an employer has failed to exercise due diligence.

This policy provides factors for considering the appropriateness of a warning letter. A key factor is the likelihood that the warning letter will be sufficient to motivate the employer to comply in the future. Another is the potential for serious injury, illness, or death in the circumstances.

There is no requirement that a warning letter be sent prior to imposing a penalty.

The policy notes that ordinarily more than one warning letter will not be issued for the same or similar violations. This is because a warning letter is to motivate an employer to comply and non-compliance of a same or similar type suggests that a warning letter was not effective to do so. Similarly, a warning letter would not generally be appropriate for the same or similar violations following a penalty or prosecution. In both circumstances, WorkSafeBC would need to consider what other enforcement tools would be effective to motivate compliance.

## 2. The Act

Section 196(1):

> The Board may, by order, impose on an employer an administrative penalty under this section if the Board is satisfied on a balance of probabilities that
>
> (a) the employer has failed to take sufficient precautions for the prevention of work related injuries or illnesses,

(b) the employer has not complied with this Part, the regulations or an applicable order, or

(c) the employer's workplace or working conditions are not safe.

Section 111(1):

> In accordance with the purposes of this Part, the Board has the mandate to be concerned with occupational health and safety generally, and with the maintenance of reasonable standards for the protection of the health and safety of workers in British Columbia and the occupational environment in which they work.

Section 111(2)(d):

> In carrying out its mandate, the Board has the following functions, duties and powers:
>
> (d) to ensure that persons concerned with the purposes of this Part are provided with information and advice relating to its administration and to occupational health and safety and occupational environment generally …

Section 183:

> If an officer makes a written report to an employer relating to an inspection, whether or not the report includes an order, the employer must promptly
>
> (a) post the report at the workplace to which it relates, and
>
> (b) give a copy of the report to the joint committee or worker health and safety representative, as applicable.

## POLICY

WorkSafeBC may send a warning letter when any of the criteria in Policy D12-196-1 for considering an administrative penalty have been met, and an employer has failed to exercise due diligence.

The applicable criteria from Policy D12-196-1 are as follows:

1. The violation resulted in a high risk of serious injury, serious illness or death;

   *Policy D12-196-2 sets out how to determine whether violations are high risk.*

2. The employer previously violated the same, or substantially similar, sections of the *Act* or Regulation (*repeat violations*) or the violation involves failure to comply with a previous order within a reasonable time;

WorkSafeBC will generally consider violations at different fixed locations of a multi-site employer together to determine whether there have been repeat violations. However if a violation is a *location violation*, WorkSafeBC will only consider violations at that location to determine whether it qualifies as a repeat violation.

A *location violation* is a violation by an employer with multiple fixed locations who, at the time of the violation, was doing all of the following:

(a) effectively communicating with all locations regarding health and safety concerns;

(b) providing adequate training to managers and others who implement site health and safety programs;

(c) making local management accountable for health and safety; and

(d) providing local management with sufficient resources for health and safety.

*Policy D12-196-3 sets out how prior violations are treated following sale or re-organization of a firm.*

3. The employer intentionally committed the violation;

4. The employer violated section 177 of the *Act*;

*Section 177 states that an employer or supervisor must not, by agreement, threat, promise, inducement, persuasion or any other means, seek to discourage, impede or dissuade a worker of the employer, or a dependant of the worker, from reporting to the Board:*

*(a) an injury or allegation of an injury, whether or not the injury occurred or is compensable under Part 1,*

*(b) an illness, whether or not the illness exists or is an occupational disease compensable under Part 1,*

*(c) a death, whether or not the death is compensable under Part 1, or*

*(d) a hazardous condition or allegation of hazardous condition in any work to which this part applies.*

5. The employer violated section 186 of the *Act*;

   *Section 186 states:*

   *(1) A person must provide all reasonable means in that person's power to facilitate an inspection under this Part.*

   *(2) A person must not*

   *(a) hinder, obstruct, molest or interfere with, or attempt to hinder, obstruct, molest or interfere with, an officer in the exercise of a power or the performance of a function or duty under this Part or the regulations,*

   *(b) knowingly provide an officer with false information, or refuse to provide information required by an officer in the exercise of the officer's powers or performance of the officer's functions or duties under this Part or the regulations, or*

   *(c) interfere with any monitoring equipment or device in a workplace placed or ordered to be placed there by the Board.*

6. The employer violated a stop work order (section 191 of the *Act*) or stop use order (section 190 of the *Act*); or

   *Section 190 gives WorkSafeBC the authority to order equipment out of service. Section 191 gives WorkSafeBC the authority to order work to stop at all or part of a workplace, or at multiple workplaces.*

7. WorkSafeBC considers that the circumstances warrant a penalty.

When considering the appropriateness of a warning letter, some of the factors WorkSafeBC may consider are:

(a) the potential for serious injury, illness or death in the circumstances; and

(b) the likelihood that a warning letter will be sufficient to motivate the employer to comply in the future, taking into account:

   (i) the extent to which the employer was or should have been aware of the hazard;

   (ii) the extent to which the employer was or should have been aware that the *Act* or regulations were being violated;

   (iii) the past compliance history of the employer; and

(iv) the effectiveness of the employer's overall program for compliance.

WorkSafeBC will, where practicable, send a copy of the letter to any union representing workers at the workplace.

WorkSafeBC will not ordinarily issue:

(a) more than one warning letter to an employer for the same or similar violations; or

(b) a warning letter to an employer that has received a penalty or has been prosecuted for the same or similar violations.

The issuance of a warning letter for a violation does not limit WorkSafeBC's ability to pursue administrative penalties, prosecution or other enforcement or compliance action for subsequent violations.

This policy relates solely to warning letters and does not affect or limit WorkSafeBC's ability to pursue administrative penalties, prosecution or other enforcement or compliance action.

## PRACTICE

WorkSafeBC will advise the employer of the obligation to provide a copy of the warning letter to the joint committee and the obligation to post the warning letter in the workplace.

In the event that all the orders underlying a warning letter are cancelled, WorkSafeBC will code the warning letter as withdrawn, or the equivalent, in its systems.

| | |
|---|---|
| **EFFECTIVE DATE:** | May 1, 2013 |
| **AUTHORITY:** | ss.196(1), 111(1) and 111(2)(d), *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also Criteria for Imposing OHS Penalties (Item D12-196-1); section 183, *Workers Compensation Act* |
| **HISTORY:** | Housekeeping amendments effective March 1, 2016 to reflect changes to the Criteria for Imposing OHS Penalties (D12-196-1) effective March 1, 2016 and formatting changes.<br><br>Housekeeping amendments to Background Section effective May 27, 2015 to reflect changes to the *Workers Compensation Act*.<br><br>Policy amended effective May 1, 2013 to:<br>(a) clarify the criteria to issue an OHS warning letter;<br>(b) treat violations following a warning letter consistently with those following orders or penalties; |

(c) confirm that WorkSafeBC will not ordinarily issue a warning letter to an employer after a prior warning letter, penalty, or prosecution for the same violation; and
(d) remove the requirement to mail a warning letter to the joint committee or worker representative.

Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.

Item developed to implement the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998*, effective October 1, 1999. Consequential changes subsequently made to various parts of the Item to reflect the *Workers Compensation Amendment Act (No. 2), 2002,* on March 3, 2003.

**APPLICATION*:***

**RE: OHS Citations** **ITEM: D12-196.1-1**

# BACKGROUND

## 1. Explanatory Notes

Employers are required to comply with the *Act* and Regulation at all times. WorkSafeBC conducts inspections and writes orders, known as OHS Compliance Orders, to address any violations. An order requires an employer to take action as soon as possible. Compliance with orders is essential to ensure that workplaces are safe.

When there is failure to comply with an order, or to prepare or send a compliance report, WorkSafeBC will expend unnecessary resources. High levels of compliance with orders allow WorkSafeBC officers to have a greater impact on health and safety.

An OHS Citation is a tool to address non-compliance with an order or failure to prepare or send a compliance report. It is an administrative penalty imposed on an employer by WorkSafeBC under section 196.1 of the *Act* and under the Lower Maximum Administrative Penalties Regulation (OHS Citation Regulation). OHS Citations are limited to circumstances that are not high risk (as defined by Policy D12-196-2).

An OHS Citation is different from an administrative penalty imposed on an employer under section 196 of the *Act* (OHS Penalty). Policy D12-196-1 sets out the criteria for an OHS Penalty.

Under the OHS Citation Regulation, an OHS Citation is $532.57 (half the maximum) for a first offence. For a subsequent violation within three years, the OHS Citation is $1,065.14 (the maximum). Both amounts are adjusted annually pursuant to the consumer price index.

Prior to issuing an OHS Citation, WorkSafeBC will first warn an employer that further failure to comply with the order may result in an OHS Citation or OHS Penalty. If the employer then fails to comply following the warning, WorkSafeBC may issue an OHS Citation or OHS Penalty.

## 2. The Act and Regulations

Section 196.1 of the *Act*:

> (1) The Board may, by order, impose on an employer an administrative penalty prescribed by a regulation of the Board, which penalty must not be more than $1,065.14, if the Board is satisfied on a balance of probabilities that the employer has failed to comply with a provision of this Part, or the regulations, as specified by a regulation of the Board.

(2) If an employer requests under section 96.2 a review of a decision made under subsection (1) of this section, the employer must

(a) post a copy of the request for review at the workplace to which the administrative penalty relates,

(b) provide a copy of the request for review to the joint committee or worker health and safety representative, as applicable, and

(c) if the workers at the workplace to which the administrative penalty relates are represented by a union, provide a copy of the request for review to the union.

(3) An employer who has been ordered to pay an administrative penalty under this section must pay the amount of the penalty to the Board for deposit into the accident fund.

(4) If an administrative penalty under this section is reduced or cancelled by a Board decision, or on a review requested under section 96.2, the Board must refund the required amount to the employer out of the accident fund.

Section 115(1)(b) of the *Act*:

Every employer must comply with… any applicable orders.

Section 194 of the *Act*:

(1) An order may include a requirement for compliance reports in accordance with this section.

(2) The employer or other person directed by an order under subsection (1) must prepare a compliance report that specifies

(a) what has been done to comply with the order, and

(b) if compliance has not been achieved at the time of the report, a plan of what will be done to comply and when compliance will be achieved.

(3) If a compliance report includes a plan under subsection (2)(b), the employer or other person must also prepare a follow-up compliance report when compliance is achieved.

(4) In the case of compliance reports prepared by an employer, the employer must

(a) post a copy of the original report and any follow-up compliance reports at the workplace in the places where the order to which it relates are posted,

(b) provide a copy of the reports to the joint committee or worker health and safety representative, as applicable,

(c) if the reports relate to a workplace where workers of the employer are represented by a union, send a copy to the union, and

(d) if required by the Board, send a copy of the reports to the Board.

Section 2.4 of the OHSR:

> Every person to whom an order or directive is issued by the Board must comply promptly or by the time set out in the order or directive.

OHS Citation Regulation:

**LOWER MAXIMUM ADMINISTRATIVE PENALTIES REGULATION**

**Definition**

**1** In this regulation, "**Act**" means the *Workers Compensation Act*.

**Administrative penalties**

**2** (1) In this section:

"**comply**" means comply with a provision of Part 3 of the Act, or the regulations, as specified in section 3 of this regulation;

"**non-compliance date**" means the date the Board, under section 196.1 (1) of the Act, is satisfied an employer has failed to comply;

"**penalty date**" means the date of the order by which the Board imposes an administrative penalty under section 196.1 (1) of the Act.

(2) The following administrative penalties are prescribed for the purposes of section 196.1 (1) of the Act:

(a) a penalty that is half of the maximum amount allowable for an administrative penalty under section 196.1 (1) of the Act, if, under that section, the Board is satisfied that an employer has failed to comply;

(b) a penalty that is the maximum amount allowable for an administrative penalty under section 196.1 (1) of the Act, if, respecting an employer,

(i) the Board is satisfied the employer has failed to comply,

(ii) the non-compliance date of the failure to comply referred to in subparagraph (i) is within 3 years after the non-compliance date of a previous failure to comply by the employer, and

(iii) the penalty date of the previous failure to comply referred to in subparagraph (ii) is earlier than the penalty date of the failure to comply referred to in subparagraph (i).

**Specified provisions**

**3** The following provisions are specified for the purposes of section 196.1(1) of the Act:

(a) section 115 (1) (b) of the Act, as it pertains to orders;

(b) section 194 (2), (3) or (4) of the Act if,

(i) as set out in subsection (1) of that section, an order includes a requirement for compliance reports, and

(ii) in the case of subsection (4) (d) of that section, the Board requires the employer to send a copy of the compliance reports to the Board;

(c) section 2.4 of the Occupational Health and Safety Regulation, as it pertains to orders.

# POLICY

## 1. When An OHS Citation May Be Imposed

The OHS Citation Regulation provides that OHS Citations may be imposed for the following violations:

- failure to comply with an order as required by section 115(1)(b) of the *Act;*
- failure to prepare or send a compliance report to WorkSafeBC as required by WorkSafeBC, or meet other requirements pursuant to section 194(2),194(3) or 194(4) of the *Act*; or
- failure to comply with section 2.4 of the OHSR.

(These are referred to in the policy as *Non-Compliance Violations*).

Under the OHS Citation Regulation, an OHS Citation is $532.57 (half the maximum) for a first offence. For a subsequent violation within three years, the OHS Citation is $1,065.14 (the maximum). Both amounts are adjusted annually pursuant to the consumer price index.

In this policy,

*Inspection Cycle* means the time period that begins when WorkSafeBC first issues an order for a specific violation and ends with compliance with that order. Each order on an inspection report has its own *inspection cycle*.

*OHS Citation Warning* means a written warning that an OHS Citation may be issued for non-compliance with an order or failure to prepare or send a compliance report. This warning of an OHS Citation includes a warning that an OHS Penalty may be imposed but is not an OHS Penalty Warning Letter.

WorkSafeBC may impose an OHS Citation for a Non-Compliance Violation if all of the following requirements are met **on a specific Inspection Cycle**:

(a) the Non-Compliance Violation is not in circumstances that are high risk;

*Policy D12-196-2 sets out how to determine whether violations are high risk.*

(b) the employer committed the Non-Compliance Violation after having received an OHS Citation Warning;

(c) an OHS Penalty or OHS Penalty Warning Letter has not already been imposed for the same Non-Compliance Violation or underlying violation; and

*OHS Penalties are discussed in Policy D12-196-1 (and related policies) and OHS Penalty Warning Letters are discussed in Policy D12-196-11.*

(d) an OHS Citation for the statutory maximum has not already been imposed.

## 2. Time Frame for Issuing an OHS Citation

When WorkSafeBC determines that an employer has failed to comply with a specific order and that an OHS Citation will be imposed, the OHS Citation will be imposed as soon as reasonably practicable, and ordinarily within 7 days.

## 3. Substitution

An OHS Citation and an OHS Penalty cannot be substituted for each other, on review or appeal.

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| **EFFECTIVE DATE:** | February 1, 2016 |
| **AUTHORITY:** | s. 196.1, *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also Criteria for Imposing OHS Penalties (D12-196-1), Transfer of OHS History (D12-196-3). |
| **HISTORY:** | Housekeeping amendments to correct typographical error regarding the amount of the statutory maximum effective March 1, 2016. |
| **APPLICATION:** | This policy applies to all violations specified in section 3 of the Lower Maximum Administrative Penalties Regulation, occurring on or after February 1, 2016. |

**RE: Occupational Health and Safety Injunctions** **ITEM: D12-198-1**

# BACKGROUND

## 1. Explanatory Notes

Section 198 of the *Act* provides that the Board (operating as WorkSafeBC) can apply to the Supreme Court of British Columbia (the "Court") for an injunction to: (a) restrain a person, including a corporation, from committing a violation; (b) require a person to comply with the *Act*, Occupational Health and Safety Regulation ("Regulation") or an order; or (c) restrain a person from carrying on an industry, or an activity in an industry for an indefinite or limited period or until the occurrence of a specified event.

When WorkSafeBC applies to the Court for an injunction, a judge will decide whether or not to grant it.

If a person fails to comply with an injunction and is found to be in contempt of court, they may face a fine, jail sentence or other terms imposed by the Court.

## 2. The Act

Section 198:

(1) On application of the Board and on being satisfied that there are reasonable grounds to believe that a person

(a) has contravened or is likely to contravene this Part [Part 3 of the *Act*], the regulations or an order, or

(b) has failed to comply with, or is likely to fail to comply with, this Part, the regulations or an order,

the Supreme Court may grant an injunction,

(c) in the case of paragraph (a), restraining the person from continuing or committing the contravention,

(d) in the case of paragraph (b), requiring the person to comply, or

(e) in the case of paragraph (a) or (b), restraining the person from carrying on an industry, or an activity in an industry, within the scope of Part 1 for an indefinite or limited period or until the occurrence of a specified event.

(1.1) For the purposes of granting an injunction respecting a person under subsection (1) (e), a person includes the following:

(a) an individual who is a member of the board of directors of a company as a result of having been elected or appointed to that position;

(b) a person who is a member of the board of directors or other governing body of a corporation other than a company, regardless of the title by which that person is designated;

(c) the chair or any vice chair of the board of directors or other governing body of a corporation, if that chair or vice chair performs the functions of the office on a full-time basis, regardless of the title by which that person is designated;

(d) the president of a corporation, regardless of the title by which that person is designated;

(e) any vice president in charge of a principal business unit of a corporation, including sales, finance or production, regardless of the title by which that person is designated;

(f) any officer of a corporation, whether or not the officer is also a director of the corporation, who performs a policy-making function in respect of the corporation and who has the capacity to influence the direction of the corporation, regardless of the title by which that person is designated;

(g) a person who is not described in any of paragraphs (a) to (f) of this subsection but who performs the functions described in any of those paragraphs, and who participates in the management of a company or corporation, other than a person who

(i) participates in the management of the company or corporation under the direction or control of a shareholder or a person described in any of paragraphs (a) to (f),

(ii) is a lawyer, accountant or other professional whose primary participation in the management of the company or corporation is the provision of professional services to the corporation,

(iii) is, if the company or corporation is bankrupt, a trustee in bankruptcy who participates in the management of the company or corporation or exercises control over its property, rights and interests primarily for the purposes of the administration of the bankrupt's estate, or

(iv) is a receiver, receiver manager or creditor who participates in the management of the company or corporation or exercises control over any of its property, rights and interests primarily for the purposes of enforcing a debt obligation of the company or corporation.

(1.2) For the purposes of subsection (1.1), "company" and "corporation" have the same meaning as in the *Business Corporations Act*.

(2) An injunction under subsection (1) may be granted without notice to others if it is necessary to do so in order to protect the health or safety of workers.

(3) A contravention of this Part, the regulations or an order may be restrained under subsection (1) whether or not a penalty or other remedy has been provided by this Part.

## POLICY

An injunction is a tool to achieve compliance with an order or an obligation under the *Act* or Regulation.

WorkSafeBC may use an injunction at the same time as other tools such as an administrative penalty or prosecution.

The following are some of the circumstances in which WorkSafeBC may consider an injunction:

(a) failure to comply with a stop work order issued under section 191 of the *Act*,

*Explanatory Note: *A stop work order, shutting down all or part of a workplace, is issued in circumstances, when, among other things there is a risk of serious injury, serious illness, or death to a worker.*

(b) failure to comply with an order to stop using or stop supplying unsafe equipment under section 190 of the *Act*,

*Explanatory Note: *A stop use order provides that an item not be used or supplied if WorkSafeBC has reasonable grounds to believe that it is not in safe operating condition or is non-compliant.*

(c) failure to comply with an order other than one in (a) or (b) above, and

(d) repeated violation of the same, or similar, section of the *Act* or Regulation.

This does not limit WorkSafeBC's ability to pursue an injunction in other circumstances.

An injunction is an exceptional remedy to seek. WorkSafeBC may consider the following factors in determining the necessity and appropriateness of pursuing an injunction:

(a) the level of risk that might result from further non-compliance,

*Explanatory Note: *If non-compliance is exposing workers to a significant risk, this supports the use of an injunction. If the risk is very low, an injunction might not be appropriate, subject to consideration of items (b) and (c) below.*

(b) the impact of the non-compliance on WorkSafeBC's ability to carry out its health and safety mandate, and

*Explanatory Note: *In some cases, the risk may be low or unknown but non-compliance may make it difficult or impossible for WorkSafeBC to carry out its mandate. For example, if WorkSafeBC is repeatedly refused entry to a workplace, an injunction may be necessary to ensure that WorkSafeBC can inspect that workplace.*

(c) the effectiveness of other tools to obtain compliance in the circumstances.

*Explanatory Note: *This involves considering what tools, such as orders and penalties, would be effective to achieve compliance as well as looking at the effectiveness of the tools already used.*

*In some cases, follow up by WorkSafeBC may be sufficient to obtain compliance. An administrative penalty or prosecution, or the prospect of either may also be sufficient to do so. In most cases of non-compliance with an order, WorkSafeBC will likely use tools other than an OHS Injunction to obtain compliance.*

*Enforcement tools have their limitations, however. Administrative penalties can be imposed very quickly in urgent circumstances but apply only to employers. This may provide little deterrence to the principal of a corporation with minimal assets. Prosecutions can be used for both employers and workers but are slower due to the inherent time requirements of the process.*

*Injunctions have the advantage of timeliness and broad application. If necessary, an injunction can be obtained quickly and can apply both to individuals and to corporations. The injunction itself and the need to appear before the court may result in a higher level of compliance than from a Board order alone. A further advantage is that non-compliance with an injunction (contempt of court) can be dealt with fairly quickly and can result in significant consequences, including fines or jail.*

* The explanatory notes are to provide additional explanation of the factors but are not themselves policy.

## PRACTICE

The President's Assignment of Authority states that injunction applications must be approved by WorkSafeBC's President/Chief Executive Officer. WorkSafeBC lawyers

apply to the Court for the injunction. The Court then decides whether to grant an injunction.

### Applications Without Notice

WorkSafeBC's normal practice is to provide notice whenever possible before the application is made.

Although the *Act* states that injunction applications may be made without notice, this will be done rarely and generally only in circumstances of extraordinary urgency. Court decisions state that there must be a very significant reason to proceed without notice to the other party.

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| **EFFECTIVE DATE:** | December 1, 2011 |
| **AUTHORITY:** | s. 198, *Workers Compensation Act* |
| **CROSS REFERENCES:** | ss. 115(1)(b), 190, 191 *Workers Compensation Act*<br>s. 2.4, Occupational Health and Safety Regulation |
| **HISTORY:** | Housekeeping amendments to Background Section and explanatory note under the first (a) in the policy, effective May 27, 2015 to reflect changes to the *Workers Compensation Act*.<br><br>Policy in effect December 1, 2011. |
| **APPLICATION:** | This policy is applicable to all decisions to pursue an injunction made after the effective date. |

# MISCELLANEOUS PROVISIONS RELATING TO PART 1

Certain provisions from Part 1 of the *Workers Compensation Act* have occupational health and safety implications.

The Items for these provisions have been grouped here using the prefix D24.

**RE: Imposition of Levies – Independent Operators** **ITEM: D24-2-1**

# BACKGROUND

## 1. Explanatory Notes

In directing that Part 1 applies to independent operators, the Board may specify the applicable health and safety obligations.

## 2. The Act

Section 2(2):

> The Board may direct that this Part [i.e., Part 1] applies on the terms specified in the Board's direction
>
> > (a) to an independent operator who is neither an employer nor a worker as though the independent operator was a worker ….

# POLICY

If an independent operator to whom Part 1 applies under section 2(2) violates the occupational health and safety obligations set out in the Board's direction, the Board may levy an administrative penalty against the independent operator.

Where appropriate, the Board will apply the policies and practices set out in the following Items to an administrative penalty levied against an independent operator to whom Part 1 applies under Section 2(2):

- D12-196-1, -2, -3, -6;
- D12-196-8; and
- D12-196-10, -11.

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| **EFFECTIVE DATE:** | March 3, 2003 |
| **AUTHORITY:** | s. 2(2), *Workers Compensation Act* |
| **CROSS REFERENCES:** | |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to remove reference to D16-223-1, delete practice reference and make formatting changes.<br>Item developed to implement the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998*, effective October 1, 1999. Consequential changes subsequently made to the policy statement to reflect the *Workers Compensation Amendment Act (No. 2), 2002,* on March 3, 2003. |
| **APPLICATION:** | |

**RE: Claims Cost Levies** **ITEM: D24-73-1**

# BACKGROUND

## 1. Explanatory Notes

Section 73 authorizes WorkSafeBC to charge claims costs to the employer in certain circumstances. The maximum amount WorkSafeBC may levy is adjusted annually in accordance with the Consumer Price Index under section 25 of the *Act*. Starting January 1, 2017, the maximum amount is $57,971.53.

## 2. The Act

Section 73:

(1) If

(a) an injury, death or disablement from occupational disease in respect of which compensation is payable occurs to a worker, and

(b) the Board considers that this was due substantially to

(i) the gross negligence of an employer,

(ii) the failure of an employer to adopt reasonable means for the prevention of injuries, deaths or occupational diseases, or

(iii) the failure of an employer to comply with the orders or directions of the Board, or with the regulations made under Part 3 of this *Act*,

the Board may levy and collect from that employer as a contribution to the accident fund all or part of the amount of the compensation payable in respect of the injury, death or occupational disease, to a maximum of $57,971.53.

(2) The payment of an amount levied under subsection (1) may be enforced in the same manner as the payment of an assessment may be enforced.

# POLICY

This section may be applied if:

(a) a worker dies, is seriously injured, or is disabled from occupational disease;

(b) this is substantially due to

(i) the gross negligence of an employer,

(ii) the failure of an employer to adopt reasonable means for the prevention of injuries, deaths or occupational diseases, or

(iii) the failure of an employer to comply with the orders or directions of WorkSafeBC, or with the Occupational Health and Safety Regulation;

(c) the grounds for an administrative penalty under Item D12-196-1 are met; and

(d) the employer has failed to establish that the employer exercised due diligence.

WorkSafeBC has discretion as to the amount charged under section 73(1) up to the maximum amount. A decision to charge claim costs may include the cost of future amounts of compensation that may be incurred after the decision if those future costs result from matters currently under consideration by WorkSafeBC, the Review Division or the Workers' Compensation Appeal Tribunal.

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| **EFFECTIVE DATE:** | March 1, 2016 |
| **AUTHORITY:** | s. 73(1), *Workers Compensation Act* |
| **CROSS REFERENCES:** | See also Accident Reporting and Investigation (Item D10-172-1); Criteria for Imposing OHS Penalties (Item D12-196-1); |
| **HISTORY:** | Changes effective March 1, 2016 to the criteria for a claims cost levy. |
| | Housekeeping changes effective September 15, 2010 to remove reference to D16-223-1, update maximum claims cost levy amount, replace Worker and Employer Services Division with the Board, delete practice reference and make formatting changes. |
| | Item developed to align prevention policy with section 73(1) of the *Workers Compensation Act* so that the Board's discretion as to the amount of the claim cost levy is not fettered, effective July 1, 2008. This change applied to all decisions, including appellate decisions, to charge claim costs on and after July 1, 2008. |
| | Consequential changes subsequently made to the policy statement to reflect the *Workers Compensation Amendment Act (No. 2), 2002,* on |

March 3, 2003. Effective December 31, 2003 a consequential change was made to include a reference to new Item D12-196-4 and the maximum amount referenced in section 73(1) was updated.
Item developed to implement the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998*, effective October 1, 1999.

**APPLICATION:** This policy applies to all violations occurring on and after March 1, 2016.

WORK SAFE BC
WORKING TO MAKE A DIFFERENCE

PREVENTION MANUAL

# POLICIES AND PRACTICES
# APPLYING TO
# THE OCCUPATIONAL HEALTH AND SAFETY REGULATIONS

*September 15, 2010*

# PART 2

# APPLICATION

Part 2 of the *Occupational Health and Safety Regulation* sets out various matters relating to the application of the *Regulation*.

**RE: Application – General Duty ("Undue Risk")** **ITEM: R2.2-1**

# BACKGROUND

## 1. Explanatory Notes

Section 2.2 provides a general duty to carry out all work without undue risk.

## 2. The Regulation

Section 2.2:

> Despite the absence of a specific requirement, all work must be carried out without undue risk of injury or occupational disease to any person.

# POLICY

Section 2.2 allows an order to be issued requiring the elimination of undue risk to any worker from a hazardous work activity not covered by a specific section of the *Regulation*. Undue risk means a greater than normal probability continued exposure to the work, or working conditions, will result in injury or adverse health effect.

An order issued using section 2.2 must identify in the body of the order the condition causing undue risk.

If the requirements of a specific section of the *Regulation* applicable to another industry or the requirements of another regulatory agency could provide guidance for elimination of the undue risk, the order may quote and/or refer to the specific section or regulatory requirement.

Officers must promptly inform their manager when an order is issued using section 2.2.

**EFFECTIVE DATE:** April 1, 2001
**AUTHORITY:** s. 2.2, *Occupational Health and Safety Regulation*
**CROSS REFERENCES:**
**HISTORY:** Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.
Replaces Policy No. 2.04 of the Prevention Division *Policy and Procedure Manual*
**APPLICATION:** This Item results from the 2000/2001 "editorial" consolidation of all prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 2.04, as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 2.04 was issued.

# PART 4

# GENERAL CONDITIONS

Part 4 of the *Occupational Health and Safety Regulation* sets out requirements relating to:

- buildings, structures and equipment;
- emergency preparedness and response;
- impairment;
- working alone or in isolation;
- workplace conduct;
- violence in the workplace;
- work area requirements;
- storing and handling materials;
- ergonomics (MSI) requirements;
- work area guards and handrails;
- illumination;
- indoor air quality;
- environmental tobacco smoke; and
- occupational environment.

**RE: General Conditions – Workplace Conduct - Prohibition of Improper Activity or Behaviour**

**ITEM: R4.25-1**

# BACKGROUND

## 1. Explanatory Notes

Section 4.25 prohibits “improper activity or behaviour” in the workplace that may create an occupational health and safety hazard. Section 4.24 defines “improper activity or behaviour” for this purpose.

## 2. The Regulation

Section 4.25:

A person must not engage in any improper activity or behaviour at a workplace that might create or constitute a hazard to themselves or to any other person.

Section 4.24:

*"improper activity or behaviour"* includes

(a) the attempted or actual exercise by a worker towards another worker of any physical force so as to cause injury, and includes any threatening statement or behaviour which gives the worker reasonable cause to believe he or she is at risk of injury, and

(b) horseplay, practical jokes, unnecessary running or jumping or similar conduct.

# POLICY

Section 4.25 may be violated in any situation where an act of violence is committed by one worker on another, whether or not the violence is covered by section 4.27.

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| **EFFECTIVE DATE:** | December 1, 2000 |
| **AUTHORITY:** | s. 4.25, *Occupational Health and Safety Regulation* |
| **CROSS REFERENCES:** | See also ss. 4.24 and 4.27, *Occupational Health and Safety Regulation*, General Conditions – Violence in the Workplace – Definition (Item R4.27-1) |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br>Replaces part of Policy No. 8.88 of the Prevention Division *Policy and Procedure Manual* |
| **APPLICATION:** | This Item results from the 2000/2001 "editorial" consolidation of all prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 8.88, as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 8.88 was issued. |

**RE: General Conditions – Violence in the Workplace – Definition** **ITEM: R4.27-1**

# BACKGROUND

## 1. Explanatory Notes

Section 4.27 defines “violence” for purpose of the violence in the workplace provisions.

## 2. The Regulation

Section 4.27:

In sections 4.28 to 4.31

*"violence"* means the attempted or actual exercise by a person, other than a worker, of any physical force so as to cause injury to a worker, and includes any threatening statement or behaviour which gives a worker reasonable cause to believe that he or she is at risk of injury.

# POLICY

Section 4.27 applies to all persons committing violence except where a worker of the same employer is the victim. Workers of the same employer are covered by section 4.25.

Verbal abuse or harassing behaviour is not included in the definition of violence for the purpose of section 4.27 unless it includes threats or behaviour which give the worker reasonable cause to believe that the worker is at risk of injury.

All workers working at a “multiple-employer” workplace within the meaning of section 118 of Part 3 of the *Act* are treated as fellow workers for the purpose of section 4.27. Violence or threats between these workers are not covered by the provision.

The definition of "violence" in section 4.27 covers the situation where a worker affected by a threat has reasonable cause to believe that the worker is at risk of injury. It does not apply where a person other than the worker has such a belief. If there is a dispute over whether the worker has reasonable cause, the worker may invoke the procedure under section 3.12.

All threats against a worker or the worker's family must be treated as serious matters. When the employer is made aware of the threat, the employer is required to notify the worker, if the worker is not already aware of the threat, and to notify the police or similar authority responsible for the protection of public safety. If the employer is unable to contact the worker, the employer should advise a family member so that appropriate precautions can be taken. The employer and any other persons involved are also required to cooperate in any investigations necessary to protect the worker or worker's family. The means of fulfilling these responsibilities should be included in the written Workplace Violence Protection Program.

A threat against a worker's family that is a result of the worker's employment is considered a threat against the worker for the purpose of section 4.27.

Where a threat is made against a worker's family, any person who becomes aware of the threat must report it to the person's supervisor or the employer.

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| **EFFECTIVE DATE:** | December 1, 2000 |
| **AUTHORITY:** | s. 4.27, *Occupational Health and Safety Regulation* |
| **CROSS REFERENCES:** | See also ss. 3.12 and 4.25, *Occupational Health and Safety Regulation*; General Conditions – Workplace Conduct – Prohibition of Improper Activity or Behaviour (Item R4.25-1); General Conditions – Violence in the Workplace – Workplace Violence Prevention Program (Item R4.29-2) |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br>Replaces part of Policy No. 8.88 of the Prevention Division *Policy and Procedure Manual* |
| **APPLICATION:** | This Item results from the 2000/2001 "editorial" consolidation of all prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 8.88, as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 8.88 was issued. |

**RE: General Conditions – Violence in the Workplace – Risk Assessment** **ITEM: R4.28-1**

# BACKGROUND

## 1. Explanatory Notes

Section 4.28 requires a risk assessment to be performed where the risk of violence arising out of the employment may be present. It lists certain matters that must be included in any such assessment.

## 2. The Regulation

Section 4.28:

(1) A risk assessment must be performed in any workplace in which a risk of injury to workers from violence arising out of their employment may be present.

(2) The risk assessment must include the consideration of

(a) previous experience in that workplace,
(b) occupational experience in similar workplaces, and
(c) the location and circumstances in which work will take place.

# POLICY

Section 4.28(2) does not state the period in the past which must be considered in performing the risk assessment. This will depend on the location, nature and circumstances of the business and the industry in which the employer is engaged. However, the assessment should include consideration of the number and nature of incidents of violence over a sufficient period to obtain a good representation of past experience. The period should be at least one year.

The object of the risk assessment is to determine the nature and type of occurrences of violence anticipated in the place of employment and the likelihood of their occurring. The factors considered will be dictated by the circumstances of the workplace. The items listed in section 4.28(2) may involve consideration of the following but are not limited to these.

- number, location, nature, severity, timing and frequency of violent incidents;
- layout and condition of the place of work, including the decor, furniture placement, the existence of barriers and fences between workers and the public, internal and external lighting, methods of access and egress and the degree to which the premises would allow a potential assailant to hide;
- type of equipment, tools, utensils, etc. that are used or available for use;
- extent and nature of contact with persons other than fellow workers and their type and gender, including the use of alcohol and drugs by them;
- age, gender, experience, skills and training of the workers concerned;
- existing work procedures, for example, when interacting with the public or in having to enforce the employer's rules or policies with regard to the public;
- existing violence prevention initiatives or programs;
- communication methods by which, for example, information about risks, incidents or threats of violence or requests for assistance may be sent;
- existence of clearly marked exit signs and emergency procedures; and
- staff deployment and scheduling, including the extent to which persons work at night, work alone, are checked when working alone and the availability of backup assistance.

The risk assessment should involve the joint health and safety committee or worker health and safety representative, where one exists, and workers and management personnel in each area affected. Sources of information are first aid records, past injury reports, checklists and questionnaires completed by workers, reports of Board officers, expert advice or relevant publications. A visual inspection of the place of employment and the work being done should be carried out.

Employers required to carry out a risk assessment must do this at the start of operations and whenever there is a significant change in the nature of the business or the location of the workplace.

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| **EFFECTIVE DATE:** | December 1, 2000 |
| **AUTHORITY:** | s. 4.28, *Occupational Health and Safety Regulation* |
| **CROSS REFERENCES:** | |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br>Replaces Policy No. 8.90 of the Prevention Division *Policy and Procedure Manual* |
| **APPLICATION:** | This Item results from the 2000/2001 "editorial" consolidation of all prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 8.90, as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 8.90 was issued. |

**RE: General Conditions – Violence in the Workplace – Procedures and Policies** **ITEM: R4.29-1**

# BACKGROUND

## 1. Explanatory Notes

Section 4.29 requires that an employer establish procedures, policies and work environment arrangements where a risk of injury to workers from violence is identified by the risk assessment performed under section 4.28.

## 2. The Regulation

Section 4.29:

If a risk of injury to workers from violence is identified by an assessment performed under section 4.28 the employer must

(a) establish procedures, policies and work environment arrangements to eliminate the risk to workers from violence, and
(b) if elimination of the risk to workers is not possible, establish procedures, policies and work environment arrangements to minimize the risk to workers.

# POLICY

In determining whether elimination of the risk is possible or what the employer should do to minimize the risk, primary regard will be had to the degree of risk in question. Other factors are:

- the state of knowledge of ways of eliminating the risk, and
- the availability and possibility of ways of eliminating the risk.

The policies, procedures and arrangements which an employer may have to implement will vary depending upon the nature of the work being carried out and the circumstances of the work. The factors which create a potential for violence in the place of employment should be shown by the results of the risk assessment.

The assessment will guide the employer as to areas where action may be necessary.

As with the risk assessment, the employer should consult with the joint health and safety committee or worker health and safety representative, where one exists, and workers and management personnel in each area affected, in considering what action is necessary to eliminate or minimize any risk of violence. Where the employer has undergone a proper process of consultation of this nature and has taken reasonable measures to eliminate or minimize any risk shown by the assessment, the Board will generally assume that the regulation has been complied with. However, the Board always reserves the right to determine whether the measures taken by an employer are in fact sufficient to meet the obligation under section 4.29.

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| **EFFECTIVE DATE:** | December 1, 2000 |
| **AUTHORITY:** | s. 4.29, *Occupational Health and Safety Regulation* |
| **CROSS REFERENCES:** | See also General Conditions – Violence in the Workplace – Workplace Violence Program (Item R4.29-2) |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br>Housekeeping changes were made on March 1, 2005 to reflect the October 29, 2003 changes to the *Occupational Health and Safety Regulation ("OHSR")*. This Item originally replaced Policy No. 8.92 of the former Prevention Division *Policy and Procedure Manual*.<br>Effective October 29, 2003, the reproduction of section 4.29(c) of the *OHSR* in this Item was deleted to reflect its repeal.<br>This Item results from the 2000/2001 "editorial" consolidation of all prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 8.92, as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 8.92 was issued. |
| **APPLICATION:** | This policy applies to procedures, policies and work environment arrangements aimed at eliminating or minimizing the risk of workplace violence on and after December 1, 2000. |

**RE: General Conditions – Violence in the Workplace – Workplace Violence Prevention Program**

**ITEM: R4.29-2**

# BACKGROUND

## 1. Explanatory Notes

Employers affected by sections 4.27 to 4.31 should have a Workplace Violence Prevention Program as part of their general Occupational Health and Safety Program. This Item sets out guidelines summarizing what should be included in a Violence Prevention Program.

## 2. The Act and the Regulation

See Items R4.27-1 to R4.31-1.

Section 173 of the *Act*:

(1) An employer must conduct a preliminary investigation under section 175 and a full investigation under section 176 respecting any accident or other incident that

(a) is required to be reported by section 172,

(b) resulted in injury to a worker requiring medical treatment,

(c) did not involve injury to a worker, or involved only minor injury not requiring medical treatment, but had a potential for causing serious injury to a worker, or

(d) was an incident required by regulation to be investigated.

(2) Subsection (1) does not apply in the case of a vehicle accident occurring on a public street or highway.

Section 175 of the *Act*:

(1) An employer must, immediately after the occurrence of an incident described in section 173, undertake a preliminary investigation to, as far as possible,

(a) identify any unsafe conditions, acts or procedures that significantly contributed to the incident, and

(b) if unsafe conditions, acts or procedures are identified under paragraph (a) of this subsection, determine the corrective action necessary to prevent, during a full investigation under section 176, the recurrence of similar incidents.

(2) The employer must ensure that a report of the preliminary investigation is

(a) prepared in accordance with the policies of the board of directors,

(b) completed within 48 hours of the occurrence of the incident, and

(c) provided to the Board on request of the Board.

(3) Following the preliminary investigation, the employer must, without undue delay, undertake any corrective action determined to be necessary under subsection (1)(b).

(4) If the employer takes corrective action under subsection (3), the employer, as soon as practicable, must

(a) prepare a report of the action taken and

(b) either

(i) provide the report to the joint committee or worker health and safety representative, as applicable, or

(ii) if there is no joint committee or worker health and safety representative, post the report at the workplace.

Section 176, of the *Act*:

(1) An employer must, immediately after completing a preliminary investigation under section 175, undertake a full investigation to, as far as possible,

(a) determine the cause or causes of the incident investigated under section 175,

(b) identify any unsafe conditions, acts or procedures that significantly contributed to the incident, and

(c) if unsafe conditions, acts or procedures are identified under paragraph (b) of this subsection, determine the corrective action necessary to prevent the recurrence of similar incidents.

(2) The employer must ensure that a report of the full investigation is

(a) prepared in accordance with the policies of the board of directors, and

(b) submitted to the Board within 30 days of the occurrence of the incident.

(3) The Board may extend the time period, as the Board considers appropriate, for submitting a report under subsection (2)(b).

(4) Following the full investigation, the employer must, without undue delay, undertake any corrective action determined to be necessary under subsection (1)(c).

(5) If the employer takes corrective action under subsection (4), the employer, as soon as practicable, must

(a) prepare a report of the action taken, and

(b) either

(i) provide the report to the joint committee or worker health and safety representative, as applicable, or

(ii) if there is no joint committee or worker health and safety representative, post the report at the workplace.

## POLICY

The requirements in sections 4.27 to 4.31 for risk assessment, procedures and policies, the duty to advise to consult a physician and the duty to instruct workers are based on the recognition of violence in the workplace as an occupational hazard. This hazard is to be addressed by the Occupational Health and Safety Program following the same procedures required by Part 3 of the *Regulation* to address other workplace hazards.

Employers affected should have a Workplace Violence Prevention Program as part of their general Occupational Health and Safety Program. This program should be implemented in cooperation with the joint health and safety committee or worker health and safety representative, where one exists, and with persons knowledgeable of the type of work to be performed. Set out below are guidelines summarizing what should be included in the Workplace Violence Prevention Program:

**(a) Policy**

The policy statement should acknowledge any risk of injury from violence to which workers are subject. The policy should provide direction from senior management to develop and implement a Workplace Violence Prevention Program. It should identify the responsibilities of managers, supervisors and workers.

**(b) Risk Assessment**

This element should provide for periodic risk assessments to evaluate the nature and type of occurrences of violence in the workplace. Risk assessments shall be carried out in accordance with section 4.28 and associated policies. Provision should be made for documentation of the risk assessment.

**(c) Written Supplementary Instructions**

The employer must under sections 4.30(3) and 3.3(c) prepare supplementary instructions for workers who are at risk of injury from violence. These instructions must enable the worker to understand the work environment arrangements designed to minimize the risk of violence. The instructions must direct the worker and any violence response teams in safe response methods.

**(d) Worker and Supervisor Training**

This element should define the training to be provided to workers at risk and their supervisors in accordance with section 4.30 and associated policies. It should include the maintenance of training records.

**(e) Incident Reporting and Investigation**

This element of the program should include policies, procedures and documentation for:

- reporting to the employer incidents or threats of violence in the workplace;
- action by supervisors to address reported incidents as required by section 3.10;
- investigation of incidents of violence in accordance with section 173 of Part 3 of the *Act*;
- implementation of corrective action in response to incidents of violence under section 176 of Part 3 of the *Act*;
- advice to workers to see a physician for treatment; and
- advice to workers when to obtain critical incident/trauma counselling and where the counselling may be obtained.

**(f) Incident Follow-up**

Provision should be made for review of corrective action taken to address incidents or threats of violence to determine its effectiveness.

## (g) Program Review

Provision should be made for an annual review to evaluate the program's performance in eliminating the risk of injury from violence in the workplace. The review should be documented and the program should be revised as necessary. This review should be carried out in consultation with the joint health and safety committee or worker health and safety representative, where one exists, and worker and management personnel where no committee or representative exists.

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| **EFFECTIVE DATE:** | October 29, 2003 |
| **AUTHORITY:** | ss. 4.27, 4.28, 4.29, 4.30 and 4.31, *Occupational Health and Safety Regulation* and ss. 173, 175 and 176, *Workers Compensation Act*. |
| **CROSS REFERENCES:** | See also ss. 3.3 and 3.10, *Occupational Health and Safety Regulation*; Accident Reporting and Investigation – Preliminary Investigation, Report and Follow-Up Action (Item D12-175-1); Accident Reporting and Investigation – Full Investigation, Report and Follow-Up Action (Item D12-176-1); General Conditions - Violence in the Workplace – Definition (Item R4.27-1); General Conditions – Violence in the Workplace - Risk Assessment (Item R4.28-1); General Conditions – Violence in the Workplace – Procedures and Policies (Item R4.29-1); General Conditions – Violence in the Workplace – Instruction of Workers (Item R4.30-1); General Conditions – Violence in the Workplace – Response to Incidents (Item R4.31-1) |
| **HISTORY:** | Housekeeping amendments to Background Section effective May 27 2015 to reflect changes to the *Workers Compensation Act*. Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br><br>Effective December 1, 2000, this Item replaced Policy No. 8.92-1 of the former Prevention Division *Policy and Procedure Manual*. Effective October 29, 2003, a reference to the duty to "respond to incidents" in the policy was replaced with a reference to the duty to "advise to consult a physician" to reflect the revision of section 4.31 of the *Occupational Health and Safety Regulation* on that date. |
| **APPLICATION:** | This policy applies to all Workplace Violence Prevention Programs established on and after October 29, 2003. |

**RE: General Conditions – Violence in the Workplace – Instruction of Workers** **ITEM: R4.30-1**

# BACKGROUND

## 1. Explanatory Notes

Section 4.30 sets out the information that employers are required to provide workers who may be exposed to the risk of violence in the workplace.

## 2. The Regulation

Section 4.30

(1) An employer must inform workers who may be exposed to the risk of violence of the nature and extent of the risk.

(2) The duty to inform workers in subsection (1) includes a duty to provide information related to the risk of violence from persons who have a history of violent behaviour and whom workers are likely to encounter in the course of their work.

(3) The employer must instruct workers who may be exposed to the risk of violence in

(a) the means for recognition of the potential for violence,
(b) the procedures, policies and work environment arrangements which have been developed to minimize or effectively control the risk to workers from violence,
(c) the appropriate response to incidents of violence, including how to obtain assistance, and
(d) procedures for reporting, investigating and documenting incidents of violence.

# POLICY

Section 4.30 includes a requirement for employers to advise workers of the results of the risk assessment under section 4.28 and to instruct workers in the measures they have taken under section 4.29 to eliminate or minimize any risk of violence. The training should be sufficient so that workers are aware of any risk of violence and the

appropriate measures to be taken if violence occurs or is threatened. It should cover all the circumstances of the place of employment found to be material to the risk assessment.

Information provided to workers with respect to the nature and extent of the risk of violence in their place of employment must, where practicable, be conveyed to workers prior to their exposure to the risk. This requirement includes information such as:

- procedures providing for information obtained by workers ending a shift to be communicated to workers starting a following shift; and

- procedures for communicating the results of overall past experience such as the flagging on computer systems of individuals with past records of violence.

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| **EFFECTIVE DATE:** | December 1, 2000 |
| **AUTHORITY:** | s. 4.30, *Occupational Health and Safety Regulation* |
| **CROSS REFERENCES:** | See also General Conditions – Violence in the Workplace – Risk Assessment (Item R4.28-1) |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br>Replaces Policy 8.94 of the Prevention Division *Policy and Procedure Manual* |
| **APPLICATION:** | This Item results from the 2000/2001 "editorial" consolidation of all prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 8.94, as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 8.94 was issued. |

**RE: General Conditions – Violence in the Workplace – Advice to Consult Physician**

**ITEM: R4.31-1**

# BACKGROUND

## 1. Explanatory Notes

Section 4.31(3) requires that an employer ensure that a worker is advised to consult a physician when violence takes place in the workplace.

## 2. The Regulation

Section 4.31(3):

> The employer must ensure that a worker reporting an injury or adverse symptom as a result of an incident of violence is advised to consult a physician of the worker's choice for treatment or referral.

# POLICY

Critical incident/trauma counselling is desirable in some circumstances to prevent workers involved in incidents of violence from suffering ongoing adverse psychological effects for which disability compensation might have to be paid. Counselling may be obtained through the worker's physician. Alternatively, some employers may have ongoing programs which can provide appropriate counselling. The employer must advise the worker to consult with a physician where this is required by section 4.31(3) but should also advise the worker of the availability of other programs which can assist. The employer's Workplace Violence Prevention Program should contain policies and procedures on when advice to obtain counselling should be given and where appropriate counselling may be obtained, such as through a facility of the employer or another local health facility. The Board may pay the cost of counselling if a claim for a work injury is made.

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|---|---|
| **EFFECTIVE DATE:** | October 29, 2003 |
| **AUTHORITY:** | s. 4.31(3), *Occupational Health and Safety Regulation* |
| **CROSS REFERENCES:** | See also ss. 3.4 and 3.10, *Occupational Health and Safety Regulation;* ss. 173, 175 and 176*, Workers Compensation Act;* Accident Reporting and Investigation – Preliminary Investigation, Report and Follow-Up Action (Item D12-175-1); Accident Reporting and Investigation – Full Investigation, Report and Follow-Up Action (Item D12-176-1). |
| **HISTORY:** | Housekeeping amendments to cross references effective May 27, 2015. Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes. Effective December 1, 2000, this Item replaced Policy No. 8.96 of the former Prevention Division *Policy and Procedure Manual.* Effective October 29, 2003, the reproduction of, and references to, the requirements under section 4.31(1) and (2) of the *Occupational Health and Safety Regulation* were deleted to reflect their repeal. |
| **APPLICATION:** | This policy applies to all incidents of violence that occur in the workplace on and after October 29, 2003. |

# PART 5

# CHEMICAL AND BIOLOGICAL SUBSTANCES

Part 5 of the *Occupational Health and Safety Regulation* sets out requirements relating to:

- workplace hazardous materials information system (WHMIS);
- containers and storage;
- flammable and combustible substances;
- substances under pressure;
- controlling exposure;
- ventilation;
- internal combustion engines;
- hazardous wastes and emissions;
- personal hygiene;
- emergency washing facilities; and
- emergency procedures.

**RE: Occupational Exposure Limits** **ITEM: R5.48-1**

# BACKGROUND

## 1. Explanatory Notes

Section 5.48 provides established limits for a worker's exposure to hazardous chemical substances. Generally, these exposure limits are established according to the Threshold Limit Values ("TLVs") adopted by the American Conference of Governmental Industrial Hygienists ("ACGIH"). However, the Board has authority to make exceptions and adopt occupational exposure limits for specific chemical substances that are not consistent with the TLVs established by the ACGIH. This policy sets out those exceptions.

## 2. The Regulation

Section 5.48:

Except as otherwise determined by the Board, the employer must ensure that no worker is exposed to a substance that exceeds the ceiling limit, short-term exposure limit, or 8-hour TWA limit prescribed by ACGIH.

Section 5.57:

(1) If a substance identified as any of the following is present in the workplace, the employer must replace it, if practicable, with a material which reduces the risk to workers:

(a) ACGIH A1 or A2, or IARC 1, 2A or 2B carcinogen;
(b) ACGIH reproductive toxin;
(c) ACGIH sensitizer;
(d) ACGIH L endnote.

(2) If it is not practicable to substitute a material which reduces the risk to workers, in accordance with subsection (1), the employer must implement an exposure control plan to maintain workers' exposure as low as reasonably achievable below the exposure limit established under section 5.48.

(3) The exposure control plan must meet the requirements of section 5.54.

### 3. Preamble to Policy

The following is a preamble to be applied to those exposure limits developed by the Board as an exception to the TLVs established by the ACGIH:

> *An exposure limit is a maximum allowed airborne concentration and is not intended to represent a fine line between safe and harmful conditions. In determining an exposure limit, it is not possible to take into account all factors that could influence the effect that exposure to the substance may have on an individual worker. Therefore, for all hazardous substances, regardless of any assigned exposure limit, the guiding principle is elimination of exposure or reduction to the lowest level that is reasonably achievable below the exposure limit.*
>
> *Due to a wide variation in individual susceptibility, some workers may experience discomfort from some substances at concentrations at or below the exposure limit. Others may be affected more seriously by aggravation of a pre-existing condition, or by development of an occupational disease. Furthermore, other workplace contaminants may affect an individual's response. The effects of combined chemical exposures are often unknown or poorly defined.*

## POLICY

### 1. Table of Occupational Exposure Limits for Excluded Substances

As presented in the table below, the Board has determined exposure limits for the following specific substances that differ from the TLVs established by the ACGIH. For solid and liquid particulate matter, except where the terms inhalable, thoracic, or respirable particulate mass are used, the exposure limits listed in the table below are expressed in terms of "total particulate matter".

| Substance/Chemical Name | CAS No. | Unit | 8-hour TWA Limit | Short-term exposure Limit, STEL | Ceiling Limit |
|---|---|---|---|---|---|
| ABATE (TEMEPHOS), TOTAL | 3383-96-8 | $mg/m^3$ | 10 | 20 | |
| ACETAMIDE | 60-35-5 | | No BC exposure limit | | |
| ACETONE CYANOHYDRIN | 75-86-5 | ppm | | | 1 |
| ALDICARB | 116-06-3 | | No BC exposure limit | | |
| ALLYL AMINE | 107-11-9 | ppm | 2 | | |
| ALLYL BROMIDE | 106-95-6 | | No BC exposure limit | | |
| ALLYL METHACRYLATE | 96-05-9 | | No BC exposure limit | | |
| ATRAZINE | 1912-24-9 | $mg/m^3$ | 5 | | |
| BENDIOCARB | 22781-23-3 | | No BC exposure limit | | |
| BENZYL CHLORIDE | 100-44-7 | ppm | | | 1 |

| Substance/Chemical Name | CAS No. | Unit | 8-hour TWA Limit | Short-term exposure Limit, STEL | Ceiling Limit |
|---|---|---|---|---|---|
| BORON TRIBROMIDE | 10294-33-4 | ppm | | | 1 |
| BORON TRICHLORIDE | 10294-34-5 | ppm | No BC exposure limit | | |
| BORON TRIFLUORIDE | 7637-07-2 | ppm | | | 1 |
| BORON TRIFLUORIDE ETHERS, as $BF_3$ | 109-63-7, 353-42-4 | | No BC exposure limit | | |
| BROMOCHLOROMETHANE | 74-97-5 | ppm | 200 | 250 | |
| BUTENES, ALL ISOMERS, INCLUDING ISOBUTENE | 106-98-9, 107-01-7, 590-18-1, 624-64-6, 25167-67-3, 115-11-7 | | No BC exposure limit | | |
| n-BUTYL ALCOHOL (n-BUTANOL) | 71-36-3 | ppm | 15 | | 30 |
| n-BUTYL ACETATE | 123-86-4 | ppm | 20 | | |
| sec-BUTYL ACETATE | 105-46-4 | ppm | 200 | | |
| tert-BUTYL ACETATE | 540-88-5 | ppm | 200 | | |
| tert-BUTYL HYDROPEROXIDE | 75-91-2 | | No BC exposure limit | | |
| n-BUTYL METHACRYLATE | 97-88-1 | ppm | 50 | | |
| CADUSAFOS | 95465-99-9 | | No BC exposure limit | | |
| CALCIUM CARBONATE (incl. LIMESTONE, MARBLE), TOTAL | 1317-65-3 | $mg/m^3$ | 10 | 20 | |
| CALCIUM CHROMATE, as Cr, TOTAL | 13765-19-20 | $mg/m^3$ | 0.001 | | |
| CALCIUM SILICATE, naturally occurring as WOLLASTONITE | 1344-95-2 | $mg/m^3$ | No BC exposure limit | | |
| CALCIUM SILICATE, synthetic nonfibrous | 1344-95-2 | $mg/m^3$ | 10 (E)(N) | | |
| CAPROLACTAM DUST | 105-60-2 | $mg/m^3$ | 1 | 3 | |
| CAPTAFOL | 2425-06-1 | $mg/m^3$ | 0.1 | | |
| CARBARYL | 63-25-2 | $mg/m^3$ | 5 | | |
| CARBON DIOXIDE | 124-38-9 | ppm | 5000 | 15,000 | |
| CARBON DISULFIDE | 75-15-0 | ppm | 4 | 12 | |
| CARBON MONOXIDE | 630-08-0 | ppm | 25 | 100 | |
| CARBON TETRACHLORIDE | 56-23-5 | ppm | 2 | | |
| CARFENTRAZONE-ETHYL | 128639-02-1 | | No BC exposure limit | | |
| CHLORDANE | 57-74-9 | $mg/m^3$ | 0.5 | | |
| CHLORDANE, INHALABLE FRACTION & VAPOUR | 57-74-9 | $mg/m^3$ | No BC exposure limit | | |
| CHLORINE | 7782-50-5 | ppm | 0.5 | 1 | |
| CHLORINE DIOXIDE | 10049-04-4 | ppm | 0.1 | 0.3 | |
| CHLOROACETIC ACID | 79-11-8 | ppm | 0.3 | | |
| o-CHLOROBENZYLIDENE MALONONITRILE | 2698-41-1 | ppm | | | 0.05 |
| CHLOROBROMOMETHANE (see BROMOCHLOROMETHANE) | 74-97-5 | | (See individual exposure limits for BROMOCHLOROMETHANE) | | |
| 1-CHLORO-1,1-DIFLUOROETHANE | 75-68-3 | ppm | 1000 | | |
| CHLORODIFLUOROMETHANE | 75-45-6 | ppm | 500 | 1250 | |

| Substance/Chemical Name | CAS No. | Unit | 8-hour TWA Limit | Short-term exposure Limit, STEL | Ceiling Limit |
|---|---|---|---|---|---|
| CHLOROFORM | 67-66-3 | ppm | 2 | | |
| β-CHLOROPRENE | 126-99-8 | ppm | 10 | | |
| CHLOROTRIFLUOROMETHANE | 75-72-9 | ppm | 1000 | | |
| CHROMITE ORE PROCESSING (CHROMATE), as Cr, TOTAL | | $mg/m^3$ | 0.05 | | |
| CHROMIUM, METAL, TOTAL | 7440-47-3 | $mg/m^3$ | 0.5 | | |
| CHROMIUM, Cr(III) COMPOUNDS, TOTAL | 7440-47-3 | $mg/m^3$ | 0.5 | | |
| CHROMIUM, INSOLUBLE, Cr(VI) COMPOUNDS, TOTAL | 7440-47-3 | $mg/m^3$ | 0.01 | | |
| CHROMIUM, WATER-SOLUBLE, Cr(VI) COMPOUNDS, TOTAL | 7440-47-3 | $mg/m^3$ | 0.025 | | 0.1 |
| CHROMIUM and INORGANIC COMPOUNDS: | | | | | |
| METALLIC CHROMIUM, as Cr(0), INHALABLE | 7440-47-3 | | No BC exposure limit | | |
| TRIVALENT CHROMIUM COMPOUNDS, as Cr(III), INHALABLE | 7440-47-3 | | No BC exposure limit | | |
| HEXVALENT CHROMIUM COMPOUNDS, as Cr(VI), INHALABLE | 7440-47-3 | | No BC exposure limit | | |
| CHROMYL CHLORIDE, as Cr(VI), INHALABLE FRACTION & VAPOUR | 7440-47-3 | | No BC exposure limit | | |
| CHROMITE ORE PROCESSING (also known as CHROMITE ORE PROCESSING (CHROMATE), as Cr, TOTAL) | | $mg/m^3$ | 0.05 | | |
| CHROMYL CHLORIDE, TOTAL | 14977-61-8 | ppm | 0.025 | | |
| CITRAL, INHALABLE | 5292-40-5 | | No BC exposure limit | | |
| CLOPIDOL | 2971-90-6 | $mg/m^3$ | 10 | | |
| COBALT and INORGANIC COMPOUNDS, as Co, TOTAL | 7440-48-4 | $mg/m^3$ | 0.02 | | |
| COBALT and INORGANIC COMPOUNDS, as Co, INHALABLE | 7440-48-4 | | No BC exposure limit | | |
| CRESOL, ALL ISOMERS | 1319-77-3, 95-48-7, 108-39-4, 106-44-5 | $mg/m^3$ | 10 | | |
| CUMENE | 98-82-8 | ppm | 25 | 75 | |
| CYANAZINE | 21725-46-2 | | No BC exposure limit | | |
| CYANOACRYLATES, ETHYL and METHYL (also known as “ETHYL CYANOACRYLATE” and “METHYL 2-CYANOACRYLATE” respectively) | 7085-85-0, 137-05-3 | | (See individual exposure limits for ETHYL CYANOACRYLATE and METHYL 2-CYANOACRYLATE) | | |
| CYANOGEN | 460-19-5 | ppm | 10 | | |
| CYANOGEN BROMIDE | 506-68-3 | | No BC exposure limit | | |
| CYCLOPENTADIENE | 542-92-7 | ppm | 75 | | |
| DIBUTYL PHOSPHATE | 107-66-4 | ppm | 1 | 2 | |
| DICHLOROMETHANE | 75-09-2 | ppm | 25 | | |
| DICYCLOHEXYLMETHANE-4,4'-DIISOCYANATE | 5124-30-1 | ppm | 0.005 | | 0.01 |
| DICYCLOPENTADIENE | 77-73-6 | ppm | 5 | | |
| DICYCLOPENTADIENE, including CYCLOPENTADIENE | 77-73-6, 542-92-7 | | (See individual exposure limits for CYCLOPENTADIENE and DICYCLOPENTADIENE) | | |
| 2,4-DICHLOROPHENOXYACETIC ACID AND ITS ESTERS | 94-75-7 | $mg/m^3$ | 10 | 20 | |

| Substance/Chemical Name | CAS No. | Unit | 8-hour TWA Limit | Short-term exposure Limit, STEL | Ceiling Limit |
|---|---|---|---|---|---|
| DIELDRIN | 60-57-1 | $mg/m^3$ | 0.25 | | |
| DIETHANOLAMINE | 111-42-2 | $mg/m^3$ | 2 | | |
| DIETHYLENE GLYCOL MONOBUTYL ETHER | 112–34-5 | | No BC exposure limit | | |
| N,N-DIETHYLHYDROXYLAMINE | 3710-84-7 | | No BC exposure limit | | |
| DIISOCYANATES, N.O.S. | | ppm | 0.005 | | 0.01 |
| DIMETHOXYMETHANE | 109-87-5 | ppm | 1000 | 1250 | |
| DIMETHYL ETHER | 115-10-6 | ppm | 1000 | | |
| DIMETHYL SULFATE | 77-78-1 | ppm | | | 0.1 |
| DIMETHYLACETAMIDE (also known as N,N-DIMETHYLACETAMIDE) | 127-19-5 | ppm | 10 | | |
| DIMETHYLFORMAMIDE | 68-12-2 | ppm | 10 | | |
| DIMETHYLPHENOL, ALL ISOMERS | 95-65-8; 95-87-4; 105-67-9; 108-68-9; 526-75-0; 576-26-1; 1300-71-6 | No BC exposure limit | | | |
| DINITROBENZENE, ALL ISOMERS | 99-65-0; 100-25-4; 528-29-0; 25154-54-5 | ppm | 0.15 | | |
| DINITRO-O-CRESOL | 534-52-1 | $mg/m^3$ | 0.2 | | |
| n-DIOCTYL PHTHALATE | 117-84-0 | $mg/m^3$ | 5 | | |
| ENDOSULFAN | 115-29-7 | $mg/m^3$ | 0.1 | | |
| ENFLURANE | 13838-16-9 | ppm | 2 | | |
| EPICHLOROHYDRIN | 106-89-8 | ppm | 0.1 | | |
| EPN, INHALABLE | 2104-64-5 | $mg/m^3$ | 0.1 | | |
| EPN, INHALABLE FRACTION & VAPOUR | 2104-64-5 | | No BC exposure limit | | |
| ETHYL ACETATE | 141-78-6 | ppm | 150 | | |
| ETHYL CYANOACRYLATE | 7085-85-0 | ppm | 0.2 | | |
| ETHYL ISOCYANATE | 109-90-0 | | No BC exposure limit | | |
| ETHYL METHACRYLATE | 97-63-2 | ppm | 50 | | |
| ETHYLENE DIBROMIDE | 106-93-4 | ppm | 0.5 | | |
| ETHYLENE DICHLORIDE (1,2-DICHLOROETHANE) | 107-06-2 | ppm | 1 | 2 | |
| ETHYLENE GLYCOL, AEROSOL | 107-21-1 | $mg/m^3$ | | | 100 |
| ETHYLENE GLYCOL, PARTICULATE | 107-21-1 | $mg/m^3$ | 10 | 20 | |
| ETHYLENE GLYCOL, VAPOUR | 107-21-1 | ppm | | | 50 |
| ETHYLENEIMINE | 151-56-4 | ppm | 0.5 | | |
| ETHYLENE OXIDE | 75-21-8 | ppm | 0.1 | 1 | |
| ETHYLIDENE NORBORNENE | 16219-75-3 | ppm | | | 5 |
| FLUDIOXONIL | 131341-86-1 | | No BC exposure limit | | |
| FLUORINE | 7782-41-4 | ppm | 0.1 | | |
| FLUORINE, as F | 7782-41-4 | ppm | (See individual exposure limit for FLUORINE) | | |
| FLUOROXENE | 406-90-6 | ppm | 2 | | |

| Substance/Chemical Name | CAS No. | Unit | 8-hour TWA Limit | Short-term exposure Limit, STEL | Ceiling Limit |
|---|---|---|---|---|---|
| FOLPET | 133-07-3 | | No BC exposure limit | | |
| FORMALDEHYDE | 50-00-0 | ppm | 0.3 | | 1 |
| FURFURAL | 98-01-1 | ppm | 2 | | |
| FURFURYL ALCOHOL | 98-00-0 | ppm | 5 | 10 | |
| GLYCERIN MIST, TOTAL | 56-81-5 | $mg/m^3$ | 10 | | |
| GLYCERIN MIST, RESPIRABLE | 56-81-5 | $mg/m^3$ | 3 | | |
| GYPSUM, TOTAL | 13397-24-5 | $mg/m^3$ | 10 | 20 | |
| HALOTHANE | 151-67-7 | ppm | 2 | | |
| HARD METALS, containing COBALT and TUNGSTEN CARBIDE, as Co | 7440-48-4, 12070-12-1 | $mg/m^3$ | No BC exposure limit | | |
| HEXAMETHYLENE DIISOCYANATE | 822-06-0 | ppm | 0.005 | | 0.01 |
| n-HEXANE | 110-54-3 | ppm | 20 | | |
| HEXANE, ALL ISOMERS except n-HEXANE | 75-83-2; 79-29-8; 96-14-0; 107-83-5 | ppm | 200 | | |
| HEXYLENE GLYCOL | 107-41-5 | ppm | | | 25 |
| HYDROGEN FLUORIDE, as F | 7664-39-3 | ppm | | | 2 |
| HYDROGEN SULFIDE | 7783-06-4 | ppm | | | 10 |
| INDENE | 95-13-6 | ppm | 10 | | |
| INDIUM TIN OXIDE, as In | 50926-11-9 | | No BC exposure limit | | |
| IODIDES | | | No BC exposure limit | | |
| IODINE | 7553-56-2 | ppm | | | 0.1 |
| IRON OXIDE, FUME | 1309-37-1 | $mg/m^3$ | 5 | 10 | |
| IRON PENTACARBONYL | 13463-40-6 | ppm | 0.01 | | |
| IRON SALTS, SOLUBLE, as Fe | | $mg/m^3$ | 1 | 2 | |
| ISOBUTYL ACETATE | 110-19-0 | ppm | 150 | | |
| ISOBUTYL NITRITE, INHALABLE FRACTION & VAPOUR | 542-56-3 | ppm | | | 1 |
| ISOPHORONE DIISOCYANATE | 4098-71-9 | ppm | 0.005 | | 0.01 |
| ISOPROPYL ACETATE | 108-21-4 | ppm | 100 | 200 | |
| ISOPROPYL GLYCIDYL ETHER (IGE) | 4016-14-2 | ppm | | | 50 |
| LEAD CHROMATE, as Cr(VI), INHALABLE | 7758-97-6 | | No BC exposure limit | | |
| LEAD CHROMATE, as Cr, TOTAL | 7758-97-6 | $mg/m^3$ | 0.012 | | |
| LEAD CHROMATE, as Pb, TOTAL | 7758-97-6 | $mg/m^3$ | 0.05 | | |
| LIQUIFIED PETROLEUM GAS | 68476-85-7 | ppm | 1000 | 1250 | |
| LITHIUM HYDRIDE | 7580-67-8 | $mg/m^3$ | 0.025 | | |
| LITHIUM HYDROXIDE | 1310-65-2 | $mg/m^3$ | | | 1 |
| MAGNESIUM OXIDE, RESPIRABLE DUST AND FUME, as Mg | 1309-48-4 | $mg/m^3$ | 3 | 10 | |
| MALEIC ANHYDRIDE | 108-31-6 | ppm | 0.1 | | |
| MANGANESE, ELEMENTAL AND INORGANIC COMPOUNDS, as Mn, TOTAL | 7439-96-5 | $mg/m^3$ | 0.2 | | |
| MANGANESE, ELEMENTAL AND INORGANIC COMPOUNDS, as Mn, INHALABLE | 7439-96-5 | | No BC exposure limit | | |

| Substance/Chemical Name | CAS No. | Unit | 8-hour TWA Limit | Short-term exposure Limit, STEL | Ceiling Limit |
|---|---|---|---|---|---|
| MANGANESE, ELEMENTAL AND INORGANIC COMPOUNDS, as Mn, RESPIRABLE | 7439-96-5 | $mg/m^3$ | 0.02 | | |
| MERCURY, ARYL COMPOUNDS | 7439-97-6 | $mg/m^3$ | 0.05 | | 0.1 |
| MESITYL OXIDE | 141-79-7 | ppm | 10 | 25 | |
| METHOMYL | 16752-77-5 | $mg/m^3$ | 2.5 | | |
| METHOXYFLURANE | 76-38-0 | ppm | 2 | | |
| 2-METHOXY-1-PROPANOL | 1589-47-5 | ppm | 20 | 40 | |
| 1-METHOXYPROPYL-2-ACETATE | 108-65-6 | ppm | 50 | 75 | |
| 2-METHOXYPROPYL-1-ACETATE | 70657-70-4 | ppm | 20 | 40 | |
| METHYLENE BISPHENYL ISOCYANATE | 101-68-8 | ppm | 0.005 | | 0.01 |
| METHYLENE bis (4-CYCLOHEXYL-ISOCYANATE) | 5124-30-1 | ppm | 0.005 | | 0.01 |
| 4,4'-METHYLENE BIS(2-CHLOROANILINE) | 101-14-4 | ppm | 0.01 | | |
| 4,4'-METHYLENEDIANILINE | 101-77-9 | ppm | 0.01 | | |
| METHYL 2-CYANOACRYLATE | 137-05-3 | ppm | 0.2 | | |
| METHYL ETHYL KETONE (MEK) | 78-93-3 | ppm | 50 | 100 | |
| METHYL PARATHION | 298-00-0 | $mg/m^3$ | 0.2 | | |
| METHYL PROPYL KETONE (2-PENTANONE) | 107-87-9 | ppm | 150 | 250 | |
| METHYLTETRAHYDROPHTHALIC ANHYDRIDE ISOMERS | 3425-89-6; 5333-84-6; 11070-44-3; 19438-63-2; 19438-64-3; 26590-20-5; 42498-58-8 | No BC exposure limit | | | |
| METHYL VINYL KETONE | 78-94-4 | ppm | | | 0.2 |
| MONOMETHYLFORMAMIDE | 123-39-7 | No BC exposure limit | | | |
| 1,5-NAPHTHYLENE DIISOCYANATE | 3173-72-6 | ppm | 0.005 | | 0.01 |
| NATURAL RUBBER LATEX, AS TOTAL PROTEINS, INHALABLE | 9006-04-6 | $mg/m^3$ | 0.001 | | |
| NICKEL, ELEMENTAL, SOLUBLE INORGANIC COMPOUNDS (NOS) | 7440-02-0 | $mg/m^3$ | 0.05 | | |
| NICKEL, INSOLUBLE INORGANIC COMPOUNDS (NOS) | 7440-02-0 | $mg/m^3$ | 0.05 | | |
| NICKEL CARBONYL, as Ni | 13463-39-3 | ppm | 0.001 | | 0.05 |
| NITRAPYRIN | 1929-82-4 | $mg/m^3$ | 10 | 20 | |
| NITRAPYRIN, INHALABLE FRACTION & VAPOUR | 1929-82-4 | No BC exposure limit | | | |
| NITROGEN DIOXIDE | 10102-44-0 | ppm | | | 1 |
| 5-NITRO-O-TOLUIDINE, INHALABLE | 99-55-8 | $mg/m^3$ | 1 | | |
| 5-NITRO-O-TOLUIDINE, INHALABLE FRACTION & VAPOUR | 99-55-8 | No BC exposure limit | | | |
| 2-NITROPROPANE | 79-46-9 | ppm | 5 | | |
| NITROUS OXIDE | 10024-97-2 | ppm | 25 | | |
| OIL MIST, MINERAL, MILDLY REFINED | | $mg/m^3$ | 0.2 | | |
| OIL MIST, MINERAL, SEVERELY REFINED | | $mg/m^3$ | 1 | | |
| PARAQUAT, as the cation, INHALABLE | 4685-14-7 | No BC exposure limit | | | |
| PARAQUAT, as the cation, RESPIRABLE | 4685-14-7 | $mg/m^3$ | 0.1 | | |
| PARAQUAT, as the cation, TOTAL | 4685-14-7 | $mg/m^3$ | 0.5 | | |
| PENTACHLORONAPHTHALENE | 1321-64-8 | $mg/m^3$ | 0.5 | | |

| Substance/Chemical Name | CAS No. | Unit | 8-hour TWA Limit | Short-term exposure Limit, STEL | Ceiling Limit |
|---|---|---|---|---|---|
| PENTACHLORONAPHTHALENE, INHALABLE FRACTION & VAPOUR | 1321-64-8 | | No BC exposure limit | | |
| PENTACHLOROPHENOL | 87-86-5 | $mg/m^3$ | 0.5 | | |
| 2,4-PENTANEDIONE | 123-54-6 | | No BC exposure limit | | |
| PERACETIC ACID | 79-21-0 | | No BC exposure limit | | |
| PHENYL ISOCYANATE | 103-71-9 | ppm | 0.005 | | 0.01 |
| PHENYL MERCAPTAN | 108-98-5 | ppm | | | 0.1 |
| PHOSPHINE | 7803-51-2 | ppm | 0.3 | 1 | |
| o-PHTHALALDEHYDE | 643-79-8 | | No BC exposure limit | | |
| PHTHALIC ANHYDRIDE | 85-44-9 | ppm | 1 | | |
| o-PHTHALODINITRILE | 91-15-6 | | No BC exposure limit | | |
| PIPERAZINE AND ITS SALTS, as PIPERAZINE | 110-85-0 | $mg/m^3$ | 0.3 | 1 | |
| PIPERIDINE | 110-89-4 | ppm | 1 | | |
| PLASTER OF PARIS, TOTAL | 26499-65-0 | $mg/m^3$ | 10 | 20 | |
| PROPOXUR | 114-26-1 | $mg/m^3$ | 0.5 | | |
| n-PROPYL ACETATE | 109-60-4 | ppm | 200 | 250 | |
| PROPYL ACETATE ISOMERS (including ISOPROPYL ACETATE and n-PROPYL ACETATE) | 108-21-4, 109-60-4 | | (See individual exposure limits for ISOPROPYL ACETATE and n-PROPYL ACETATE) | | |
| PROPYLENE GLYCOL ETHYL ETHER | 1569-02-4 | | No BC exposure limit | | |
| PROPYLENEIMINE | 75-55-8 | ppm | 2 | | |
| RHODIUM, METAL AND INSOLUBLE COMPOUNDS, as Rh | 7440-16-6 | $mg/m^3$ | 0.1 | 0.3 | |
| RHODIUM, SOLUBLE COMPOUNDS, as Rh | 7440-16-6 | $mg/m^3$ | 0.001 | 0.003 | |
| SELENIUM AND COMPOUNDS, as Se | 7782-49-2 | $mg/m^3$ | 0.1 | | |
| SILICA, AMORPHOUS: | | | | | |
| DIATOMACEOUS EARTH, UNCALCINED, TOTAL | 61790-53-2 | $mg/m^3$ | 4 | | |
| DIATOMACEOUS EARTH, UNCALCINED, RESPIRABLE | 61790-53-2 | $mg/m^3$ | 1.5 | | |
| PRECIPITATED SILICA and SILICA GEL, TOTAL | 112926-00-8 | $mg/m^3$ | 4 | | |
| PRECIPITATED SILICA and SILICA GEL, RESPIRABLE | 112926-00-8 | $mg/m^3$ | 1.5 | | |
| SILICA FUME, TOTAL | 69012-64-2 | $mg/m^3$ | 4 | | |
| SILICA FUME, RESPIRABLE | 69012-64-2 | $mg/m^3$ | 1.5 | | |
| SILICON TETRAHYDRIDE (SILANE) | 7803-62-5 | ppm | 0.5 | 1 | |
| SILVER AND COMPOUNDS, as Ag | 7440-22-4 | $mg/m^3$ | 0.01 | 0.03 | |
| SIMAZINE | 122-34-9 | | No BC exposure limit | | |
| STEARATES | 57-11-4; 557-04-0; 557-05-1; 822-16-2 | $mg/m^3$ | 10 (J) | | |
| STODDARD SOLVENT (MINERAL SPIRITS) | 8052-41-3 | $mg/m^3$ | 290 | 580 | |
| STRONTIUM CHROMATE, as Cr, TOTAL | 7789-06-2 | $mg/m^3$ | 0.0005 | | |
| STYRENE | 100-42-5 | ppm | 50 | 75 | |
| SULFOMETURON METHYL | 74222-97-2 | $mg/m^3$ | 5 | | |

| Substance/Chemical Name | CAS No. | Unit | 8-hour TWA Limit | Short-term exposure Limit, STEL | Ceiling Limit |
|---|---|---|---|---|---|
| SULFOMETURON METHYL, INHALABLE FRACTION & VAPOUR | 74222-97-2 | | No BC exposure limit | | |
| SULFOXAFLOR | 946578-00-3 | | No BC exposure limit | | |
| SULFUR DIOXIDE | 7446-09-5 | ppm | 2 | 5 | |
| SULPROFOS | 35400-43-2 | $mg/m^3$ | 1 | | |
| TANTALUM and TANTALUM OXIDE dusts, as Ta | 7440-25-7 | $mg/m^3$ | 5 | | |
| TEMEPHOS, TOTAL | 3383-96-8 | | (See individual exposure limits for ABATE (TEMEPHOS), TOTAL) | | |
| 1,1,2,2-TETRABROMOETHANE, INHALABLE FRACTION & VAPOUR | 79-27-6 | ppm | 0.1 | | |
| 1,1,1,2-TETRACHLORO-2,2-DIFLUOROETHANE | 76-11-9 | ppm | 500 | | |
| 1,1,2,2-TETRACHLORO-1,2-DIFLUOROETHANE | 76-12-0 | ppm | 200 | | |
| TETRAETHYL LEAD, as Pb | 78-00-2 | $mg/m^3$ | 0.075 | | |
| TETRAMETHYL LEAD, as Pb | 75-74-1 | $mg/m^3$ | 0.075 | | |
| TETRAMETHYL SUCCINONITRILE | 3333-52-6 | ppm | 0.5 | | |
| THIACLOPRID | 111988-49-9 | | No BC exposure limit | | |
| THIOGLYCOLIC ACID | 68-11-1 | ppm | 1 | | |
| THIOGLYCOLIC ACID and salts | 68-11-1 | | No BC exposure limit | | |
| THIONYL CHLORIDE | 7719-09-7 | ppm | | | 1 |
| THIRAM | 137-26-8 | $mg/m^3$ | 1 | | |
| TIN and INORGANIC COMPOUNDS, excluding TIN HYDRIDE and INDIUM TIN OXIDE, as Sn | 7440-31-5; 18282-10-5; 21651-19-4 | | (See individual exposure limits for TIN and INORGANIC COMPOUNDS, excluding TIN HYDRIDE, as Sn, METAL; and for TIN and INORGANIC COMPOUNDS, excluding TIN HYDRIDE, as Sn, OXIDE and INORGANIC COMPOUNDS) | | |
| TIN and INORGANIC COMPOUNDS, excluding TIN HYDRIDE, as Sn, METAL | 7440-31-5 | $mg/m^3$ | 2 | | |
| TIN and INORGANIC COMPOUNDS, excluding TIN HYDRIDE, as Sn, OXIDE and INORGANIC COMPOUNDS | 7440-31-5 | $mg/m^3$ | 2 | | |
| 2,4-TOLUENE DIISOCYANATE (TDI) | 584-84-9 | ppm | 0.005 | | 0.01 |
| 2,6-TOLUENE DIISOCYANATE (TDI) | 91-08-7 | ppm | 0.005 | | 0.01 |
| 2,4- and 2,6-TOLUENE DIISOCYANATE AS A MIXTURE | 584-84-9<br>91-08-7 | | No BC exposure limit (see section 5.51, *OHSR*) | | |
| TRIBUTYL PHOSPHATE | 126-73-8 | ppm | 0.2 | | |
| 1,2,3-TRICHLOROPROPANE | 96-18-4 | ppm | 10 | | |
| 1,1,2-TRICHLORO-1,2,2-TRIFLUOROETHANE | 76-13-1 | ppm | 500 | 1250 | |
| TRIMELLITIC ANHYDRIDE | 552-30-7 | $mg/m^3$ | | | 0.04 |
| TRIMETHYL HEXAMETHYLENE DIISOCYANATE | 28679-16-5 | ppm | 0.005 | | 0.01 |
| 2,4,6-TRINITROTOLUENE (TNT), TOTAL | 118-96-7 | $mg/m^3$ | 0.1 | | |
| 2,4,6-TRINITROTOLUENE (TNT), INHALABLE FRACTION & VAPOUR | 118-96-7 | | No BC exposure limit | | |
| TRIORTHOCRESYL PHOSPHATE | 78-30-8 | $mg/m^3$ | 0.1 | | |
| TRI-n-BUTYLTIN COMPOUNDS | 688-73-3 | $mg/m^3$ | 0.05 | | |
| TUNGSTEN as W | | | | | |

| Substance/Chemical Name | CAS No. | Unit | 8-hour TWA Limit | Short-term exposure Limit, STEL | Ceiling Limit |
|---|---|---|---|---|---|
| Metal and insoluble compounds | 7440-33-7 | $mg/m^3$ | 5 | 10 | |
| Soluble compounds | 7440-33-7 | $mg/m^3$ | 1 | 3 | |
| URANIUM COMPOUNDS, NATURAL, SOLUBLE, as U | 7440-61-1 | $mg/m^3$ | 0.05 | | |
| VEGETABLE OIL MIST, RESPIRABLE FRACTION, EXCEPT CASTOR, CASHEW NUT, OR SIMILAR IRRITATING OILS | 8008-89-7 | $mg/m^3$ | 3 | | |
| VINYLIDENE CHLORIDE | 75-35-4 | ppm | 1 | | |
| VINYL TOLUENE, ALL ISOMERS | 25013-15-4 | ppm | 25 | 75 | |
| WARFARIN | 81-81-2 | $mg/m^3$ | 0.1 | | |
| WOOD DUST: | | | | | |
| ALLERGENIC | | $mg/m^3$ | 1 | | |
| NON-ALLERGENIC, HARDWOOD | | $mg/m^3$ | 1 | | |
| NON-ALLERGENIC, SOFTWOOD | | $mg/m^3$ | 2.5 | | |
| m-XYLENE ALPHA, ALPHA' -DIAMINE | 1477-55-0 | $mg/m^3$ | | | 0.1 |
| ZINC CHROMATES, as Cr, TOTAL | 11103-86-9, 13530-65-9, 37300-23-5 | $mg/m^3$ | 0.01 | | |
| ZINC STEARATE, TOTAL | 557-05-1 | $mg/m^3$ | 10 | 20 | |

(E) = the value is for particulate matter containing no asbestos and less than 1% crystalline silica
(N) = the 8-hour TWA listed in the Table is for the total dust. The substance also has an 8-hour TWA of 3 $mg/m^3$ for the respirable fraction
(J) = does not include stearates of toxic metals

## 2. Dusts

The Board categorizes particulates that are insoluble or poorly soluble in water and do not cause toxic effects other than by inflammation or the mechanism of "lung overload", as “nuisance dusts”.

A “nuisance dust” will have an exposure limit or TLV of 10 mg/m$^3$ for total particulate. It is recognized that the respirable fraction of “nuisance dusts” may also be measured. The equivalent exposure limit for respirable particulate is 3 mg/m$^3$. Respirable particulate refers to the fraction of inhaled dust that is capable of passing through the upper respiratory tract to the gas exchange region of the lung. Total particulate refers to a wide range of particle sizes capable of being deposited in the various regions of the respiratory tract.

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**EFFECTIVE DATE:** May 15, 2019
**AUTHORITY:** s. 5.48, O*ccupational Health and Safety Regulation*
**CROSS REFERENCES:**

**HISTORY:** Effective May 15, 2019, housekeeping changes were made to add the following substances to the Table of Occupational Exposure Limits for Excluded Substances in accordance with the OEL review and adoption procedure:

CHLORDANE

CHLORDANE, INHALABLE FRACTION & VAPOUR

o-CHLOROBENZYLIDENE MALONONITRILE

COBALT and INORGANIC COMPOUNDS, as Co, TOTAL

COBALT and INORGANIC COMPOUNDS, as Co, INHALABLE

CYANAZINE

CYCLOPENTADIENE

DICYCLOPENTADIENE

DICYCLOPENTADIENE, including CYCLOPENTADIENE

DIMETHYLPHENOL, ALL ISOMERS

DINITROBENZENE, ALL ISOMERS

DINITRO-O-CRESOL

EPN, INHALABLE

EPN, INHALABLE FRACTION & VAPOUR

FLUORINE, as F

INDIUM TIN OXIDE, as In

ISOBUTYL NITRITE, INHALABLE FRACTION & VAPOUR

4,4'-METHYLENE BIS(2-CHLOROANILINE)

METHYLTETRAHYDROPHTHALIC ANHYDRIDE ISOMERS

METHYL VINYL KETONE

MONOMETHYLFORMAMIDE

NITRAPYRIN

NITRAPYRIN, INHALABLE FRACTION & VAPOUR

5-NITRO-O-TOLUIDINE, INHALABLE

5-NITRO-O-TOLUIDINE, INHALABLE FRACTION & VAPOUR

PENTACHLORONAPHTHALENE

PENTACHLORONAPHTHALENE, INHALABLE FRACTION & VAPOUR

o-PHTHALALDEHYDE

PROPYLENE GLYCOL ETHYL ETHER

SULFOMETURON METHYL

SULFOMETURON METHYL, INHALABLE FRACTION & VAPOUR

SULFOXAFLOR

TEMEPHOS, TOTAL

1,1,2,2-TETRABROMOETHANE, INHALABLE FRACTION & VAPOUR

TETRAMETHYL SUCCINONITRILE

THIACLOPRID

TIN and INORGANIC COMPOUNDS, excluding TIN HYDRIDE and INDIUM TIN OXIDE, as Sn

TIN and INORGANIC COMPOUNDS, excluding TIN HYDRIDE, as Sn, METAL

TIN and INORGANIC COMPOUNDS, excluding TIN HYDRIDE, as Sn, OXIDE and INORGANIC COMPOUNDS

2,4,6-TRINITROTOLUENE (TNT), TOTAL

2,4,6-TRINITROTOLUENE (TNT), INHALABLE FRACTION & VAPOUR

m-XYLENE ALPHA, ALPHA'-DIAMINE

Effective July 3, 2018, housekeeping changes were made to add the following substances to the Table of Occupational Exposure Limits for Excluded Substances in accordance with the OEL review and adoption procedure:

ALDICARB

ALLYL METHACRYLATE

BENDIOCARB

BORON TRIFLUORIDE ETHERS, as $BF_3$

tert-BUTYL HYDROPEROXIDE

CALCIUM CHROMATE, as Cr, TOTAL

CARFENTRAZONE-ETHYL

CHLORINE

CHLORINE DIOXIDE

CHROMITE ORE PROCESSING (CHROMATE), as Cr, TOTAL

CHROMIUM AND INORGANIC COMPOUNDS

- METALLIC CHROMIUM, as Cr(0), INHALABLE
- TRIVALENT CHROMIUM COMPOUNDS, as Cr(III), INHALABLE
- HEXAVALENT CHROMIUM COMPOUNDS, as Cr(VI), INHALABLE
- CHROMYL CHLORIDE, as Cr(VI), INHALABLE FRACTION & VAPOUR
- CHROMITE ORE PROCESSING, TOTAL

CHROMYL CHLORIDE, TOTAL

CYANOACRYLATES, ETHYL and METHYL

DIMETHYLACETAMIDE

DIMETHYLFORMAMIDE

ETHYL CYANOACRYLATE

FLUDRIOXONIL

ISOPROPYL ACETATE

LEAD CHROMATE, as Cr(VI), INHALABLE

LEAD CHROMATE, as Cr, TOTAL

LEAD CHROMATE, as Pb, TOTAL

METHYL 2-CYANOACRYLATE

PARAQUAT, as the cation

PHOSPHINE

n-PROPYL ACETATE

PROPYL ACETATE ISOMERS

STRONTIUM CHORMATE, as Cr, TOTAL

THIOGLYCOLIC ACID and salts

ZINC CHROMATES, as Cr, TOTAL

Effective July 3, 2018, housekeeping changes were made to remove the following six substances from the Table of Occupational Exposure Limits for Excluded Substances in accordance with the OEL review and adoption procedure:

| | |
|---|---|
| ACETYLENE | HYDROGEN |
| ARGON | NEON |
| HELIUM | NITROGEN |

Effective July 3, 2018, the following editorial changes were made to the Table of Occupational Exposure Limits for Excluded Substances to improve readability and clarity:

- Adding a clarifying opening statement regarding substances' size-selective exposure limits
- Standardizing terminology for substances and exposure limits with size-selective fractions
- Changing "No previous limit" to "No BC exposure limit"
- Implementing formatting changes

Effective June 1, 2018, housekeeping changes were made to add the following substances to the Table of Occupational Exposure Limits for Excluded Substances in accordance with the OEL review and adoption procedure:

| | |
|---|---|
| GLYCERIN MIST, TOTAL AEROSOL | MANGANESE, ELEMENTAL AND INORGANIC COMPOUNDS, as Mn, RESPIRABLE FRACTION |
| MANGANESE, ELEMENTAL AND INORGANIC COMPOUNDS, as Mn, INHALABLE FRACTION | NICKEL CARBONYL, as Ni |

Effective June 1, 2018, housekeeping changes were made to remove sixteen substances to the Table of Occupational Exposure Limits for Excluded Substances in accordance with the OEL review and adoption procedure:

| | |
|---|---|
| ACETONE | METHYL ISOAMYL KETONE |
| ALIPHATIC HYDROCARBON GASES, ALKANES [$C_1$ – $C_4$] | METHYL ISOCYANATE |
| BARIUM SULFATE | NAPTHALENE |

| | |
|---|---|
| 1-BROMOPROPANE | OXALIC ACID, ANHYDROUS |
| BUTANE, ISOMERS;<br>• n-BUTANE<br>• ISOBUTANE | OXALIC ACID, DIHYDRATE |
| ETHYL TERT-BUTYL ETHER | PENTANE, ALL ISOMERS |
| 1-METHOXY-2-PROPANOL | TRICHLOROACETIC ACID |
| METHYL FORMATE | TRIETHYLAMINE |

The following substances / chemical names were corrected:

- GLYCERIN MIST, RESPIRABLE was corrected to GLYCERIN MIST, RESPIRABLE FRACTION
- MANGANESE, ELEMENTAL AND INORGANIC COMPOUNDS, as Mn was corrected to MANGANESE, ELEMENTAL AND INORGANIC COMPOUNDS, as Mn, TOTAL DUST
- NICKEL CARBONYL was corrected to NICKEL CARBONYL, as Ni

Effective June 1, 2017, housekeeping changes were made to remove the following substances to the Table of Occupational Exposure Limits for Excluded Substances in accordance with the OEL review and adoption procedure:

| | |
|---|---|
| ACETAMIDE | FOLPET |
| ISOBUTANE | FURFURAL |
| CADUSAFOS | HEXYLENE GLYCOL |
| CAPTAFOL | PHTHALIC ANHYDRIDE |
| β-CHLOROPRENE | STEARATES |
| ETHYLENE GLYCOL (AEROSOL) | TUNGSTEN as W, metal and insoluble compounds; soluble compounds |

Effective July 15, 2016, housekeeping changes were made to add the following substances to the Table of Occupational Exposure Limits for Excluded Substances in accordance with the OEL review and adoption procedure.

| | |
|---|---|
| BORON TRIBROMIDE | HARD METALS, containing COBALT and TUNGSTEN CARBIDE as Co |
| BORON TRICHLORIDE | ISOBUTYL ACETATE |
| BORON TRIFLUORIDE | PROPOXUR |
| SEC-BUTYL ACETATE | SIMAZINE |

| | |
|---|---|
| TERT-BUTYL ACETATE | TOLUENE DIISOCYANATE, 2,4- and 2,6- as a mixture |
| CALCIUM SILICATE, naturally occurring as WOLLASTONITE | TRIORTHOCRESYL PHOSPHATE |
| CALCIUM SILICATE, synthetic nonfibrous | WARFARIN |
| CYANOGEN | |

Effective May 1, 2015, changes were made to add the following substances to the Table of Occupational Exposure Limits for Excluded Substances:

| | |
|---|---|
| ACETYLENE | OXALIC ACID, ANHYDROUS and DIHYDRATE |
| CYANOGEN BROMIDE (NEW TLV) | 1,2,3-TRICHLOROPROPANE |
| LITHIUM HYDRIDE | TRIETHYLAMINE |
| METHYL FORMATE | |

Effective February 1, 2015, changes were made to remove eight substances from the Table of Occupational Exposure Limits for Excluded Substances:

| | |
|---|---|
| BERYLLIUM AND COMPOUNDS | ALPHA-METHYL STYRENE |
| CARBONYL SULFIDE | NONANE |
| DIACETYL | PORTLAND CEMENT |
| ETHYL FORMATE | VANADIUM PENTOXIDE |

On April 7, 2014 changes were made to correct the exposure limit for Ethylidene norbornene.

Effective April 1, 2014, changes were made to add 17 substances to the Table of Occupational Exposure Limits for Excluded Substances:

| | |
|---|---|
| ARGON | METYHL ISOCYANATE |
| ATRAZINE | NAPTHALENE |
| BARIUM SULFATE | NEON |
| 1-BROMOPROPANE | NITROGEN |
| ETHYLIDENE NORBORNENE | PENTACHLOROPHENOL |
| ETHYL ISOCYANATE | PENTANE, all isomers |
| HELIUM | PERACETIC ACID |
| HYDROGEN | TRICHLOROACETIC ACID |
| METHOMYL | |

Effective May 1, 2013, changes were made to add eight substances to the Table of Occupational Exposure Limits for Excluded Substances:

ALIPHATIC HYDROCARBON GASES, ALKANES [$C_1$ – $C_4$]
CLOPIDOL
DIETHYLENE GLYCOL MONOBUTYL ETHER
N,N–DIETHYLHYDROXYLAMINE
ETHYL TERT-BUTYL ETHER
MANGANESE, elemental and inorganic compounds, as Mn
METHYL ISOAMYL KETONE
TRIBUTYL PHOSPHATE

Effective April 10, 2012, changes were made to add six substances to the Table of Occupational Exposure Limits for Excluded Substances:

| | |
|---|---|
| ALLY BROMIDE | CARBONYL SULFIDE |
| DIACETYL | ETHYL FORMATE |
| o-PHTHALODINITRILE | NONANE |

CAS No for piperazine and its salts was corrected from 142-64-3 to 110-85-0.

Housekeeping change effective October 14, 2011 to correct the reference to section 5.57 of the regulation. This is not a substantive change.

Effective September 15, 2011, changes were made to remove seven substances from the Table of Occupational Exposure Limits for Excluded Substances:

| | |
|---|---|
| ACETIC ANHYDRIDE | CARBON BLACK |
| ETHYL BENZENE | METHYL ISOPROPYL KETONE |
| SOAPSTONE | SOAPSTONE, RESPIRABLE |
| 4,4' THIOBIS (6-tert-butyl-m-CRESOL) | |

Effective June 1, 2011, changes were made to remove three substances from the Table of Occupational Exposure Limits for Excluded Substances:

| | |
|---|---|
| COTTON DUST, raw | METHYL ISOBUTYL KETONE |
| THALLIUM AND SOLUBLE COMPOUNDS | |

Housekeeping changes effective June 1, 2011, to replace “exposure level” with “exposure limit” in item 3 of the Background of this Policy. These changes also add 2,4-Pentanedione to the Table of Occupational Exposure Limits for Excluded Substances pursuant to the Occupational Exposure Limit review and adoption procedure approved by the Board of Directors at their March 2010 meeting.

Housekeeping changes effective April 19, 2011 in accordance with the new Occupational Exposure Limit review and adoption procedure approved by the Board of Directors at their March 2010 meeting. The changes add seven substances to the Table of Occupational Exposure Limits for Excluded Substances:

| | |
|---|---|
| ACETIC ANHYDRIDE | CARBON BLACK |
| ETHYL BENZENE | MALEIC ANHYDRIDE |
| METHYL ISOPROPYL KETONE | SOAPSTONE |
| 4,4' THIOBIS (6-tert-butyl-m-CRESOL) | |

Housekeeping changes effective September 15, 2010 to update regulation reference, delete practice reference, and make formatting changes.

The Table of Occupational Exposure Limits for Excluded Substances has been amended to include 18 substances for which the Board of Directors has made an exception to the adoption of these substances for which the American Conference of Governmental Industrial Hygienists changed the Threshold Limit Values in 2008 and 2009. The effect of this amendment is that the substances will be re-assigned the OELs that were in effect prior to the revision by ACGIH. The Table of Occupational Exposure Limits for Excluded Substances has been amended to delete two substances so the more protective American Conference of Governmental Industrial Hygienists Threshold Limit Values will now apply to these substances. The revisions were made to the Table effective September 1, 2010.

The Table of Occupational Exposure Limits for Excluded Substances has been amended to include new or revised substances for which the American Conference of Governmental Industrial Hygienists has changed the Threshold Limit Values in 2010. The effect of this amendment was that the existing occupational exposure limits for these substances continue to be in effect. These substances were added to the Table effective April 1, 2010.

This item was originally developed to implement the amendments made to the *Occupational Health and Safety Regulation*, effective October 29, 2003 pertaining to occupational exposure limits. A review of the policy was conducted to ensure that all substances for which an exception was warranted were listed, and there was no duplication with the information provided by the ACGIH.

**APPLICATION:**

Each amendment of this policy applies to incidents occurring on and after the effective date of the amendment. If a decision made before the amendment effective date is within the appeal period, at Review Division, or at WCAT, it remains subject to the policy in effect at the time of the incident.

**RE: Chemical and Biological Substances – Controlling Exposure – Exposure Control Plan** **ITEM: R5.54-1**

# BACKGROUND

## 1. Explanatory Notes

Section 5.54 sets out the requirement for an exposure control plan in certain circumstances and the necessary elements if an exposure control plan is required. Among those elements is health monitoring under section 5.54(2)(f).

## 2. The Regulation

Section 5.54:

(1) An exposure control plan must be implemented when

(a) exposure monitoring under section 5.53(3) indicates that a worker is or may be exposed to an air contaminant in excess of 50% of its exposure limit,
(b) measurement is not possible at 50% of the applicable exposure limit, or
(c) otherwise required by this Regulation.

(2) The exposure control plan must incorporate the following elements:

(a) a statement of purpose and responsibilities;
(b) risk identification, assessment and control;
(c) education and training;
(d) written work procedures, when required;
(e) hygiene facilities and decontamination procedures, when required;
(f) health monitoring, when required;
(g) documentation, when required.

(3) The plan must be reviewed at least annually and updated as necessary by the employer, in consultation with the joint committee or the worker health and safety representative, as applicable.

# POLICY

At the request of persons outside the Board or Board staff, the Board may arrange for samples to be analyzed as part of a health monitoring program under section 5.54(2)(f). The Board will have the results organized into broad categories of body burden levels and reported to the person who made the request and to Board staff and industry representatives concerned with the particular program.

The actual body burden levels of individuals are confidential and will only be revealed to a worker if the worker inquires, and to anyone else with the worker's written authorization. Questions regarding specific analysis results should be referred to the Board staff concerned with the particular program.

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| | |
|---|---|
| **EFFECTIVE DATE:** | April 1, 2001 |
| **AUTHORITY:** | s. 5.54(2)(f), Occ*upational Health and Safety Regulation* |
| **CROSS REFERENCES:** | |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br>Replaces Policy No. 13.01(6) of the Prevention Division *Policy and Procedure Manual* |
| **APPLICATION:** | This Item results from the 2000/2001 “editorial” consolidation of all prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 13.01(6), as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 13.01(6) was issued. |

# PART 8

# PERSONAL PROTECTIVE CLOTHING AND EQUIPMENT

Part 8 of the *Occupational Health and Safety Regulation* sets out requirements relating to:

- general matters;
- safety headgear;
- eye and face protection;
- limb and body protection;
- footwear;
- high visibility and distinguishing apparel;
- buoyancy equipment;
- flame resistant clothing; and
- respiratory protection.

**RE: Personal Protective Clothing and Equipment – Respirators – Interchanging Air Cylinders** **ITEM: R8.33-1**

# BACKGROUND

## 1. Explanatory Notes

Section 8.33 outlines the requirements for the selection of respirators.

## 2. The Regulation

Section 8.33:

(1) The employer, in consultation with the worker and the occupational health and safety committee, if any, or the worker health and safety representative, if any, must select an appropriate respirator in accordance with *CSA Standard CAN/CSA-Z94.4-93, Selection, Use and Care of Respirators*.

(2) Only a respirator which meets the requirements of a standard acceptable to the Board may be used for protection against airborne contaminants in the workplace.

# POLICY

Compressed air cylinders may be interchanged with different makes of self-contained breathing apparatus (SCBA) provided the cylinders are fully compatible with the SCBA on which they will be used. The cylinders must have the same pressure rating and fittings with the same type of thread and thread length.

When interchanging is being done, the user should be aware that using cylinders originally made for one make of SCBA on another make will void the NIOSH approval for that SCBA. This may affect the user's ability to successfully recover damages from the SCBA manufacturer in the event of an equipment problem or malfunction.

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**EFFECTIVE DATE:** August 1, 2001
**AUTHORITY:** s. 8.33, *Occupational Health and Safety Regulation*
**CROSS REFERENCES:**
**HISTORY:** Housekeeping changes effective February 1, 2011 to reflect regulation changes effective on that date.
Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.

Housekeeping changes were made on March 1, 2005 to reflect the October 29, 2003 changes to the *Occupational Health and Safety Regulation ("OHSR")*. This Item originally replaced Policy No. 14.23(2)-1 of the former Prevention Division *Policy and Procedure Manual*. Effective October 29, 2003, the reproduction of section 8.33(1) of the *OHSR* in this Item was revised to reflect its amendment.
This Item results from the 2000/2001 "editorial" consolidation of all Prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 14.23(2)-1, as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 14.23(2)-1 was issued.

**APPLICATION:** This policy applies to interchanging compressed air cylinders on self-contained breathing apparatus on and after August 1, 2001.

**RE: Personal Protective Clothing and Equipment – Respirators – Interchanging Air Lines** **ITEM: R8.33-2**

# BACKGROUND

## 1. Explanatory Notes

Section 8.33 outlines the requirements for the selection of respirators.

## 2. The Regulation

Section 8.33:

(1) The employer, in consultation with the worker and the occupational health and safety committee, if any, or the worker health and safety representative, if any, must select an appropriate respirator in accordance with *CSA Standard CAN/CSA-Z94.4-93, Selection, Use and Care of Respirators*.

(2) Only a respirator which meets the requirements of a standard acceptable to the Board may be used for protection against airborne contaminants in the workplace.

# POLICY

Air lines on respirators can generally be interchanged provided they:

- are NIOSH approved;
- are of the same inside diameter and length as recommended by the manufacturer; and
- have compatible end fittings.

When interchanging is being done, the user should be aware that using air lines originally made for one make of respirator on another make will void the NIOSH approval for that respirator. This may affect the user's ability to successfully recover damages from the respirator manufacturer in the event of an equipment problem or malfunction.

**EFFECTIVE DATE:** August 1, 2001
**AUTHORITY:** s. 8.33, *Occupational Health and Safety Regulation*
**CROSS REFERENCES:**
**HISTORY:** Housekeeping changes effective February 1, 2011 to reflect regulation changes effective on that date.
Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.
Housekeeping changes were made on March 1, 2005 to reflect the October 29, 2003 changes to the *Occupational Health and Safety Regulation ("OHSR")*. This Item originally replaced Policy No. 14.23(2)-2 of the former Prevention Division *Policy and Procedure Manual*.
Effective October 29, 2003, the reproduction of section 8.33(1) of the *OHSR* in this Item was revised to reflect its amendment.
This Item results from the 2000/2001 "editorial" consolidation of all Prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 14.23(2)-2, as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 14.23(2)-2 was issued. A caution has been added regarding the voiding of NIOSH approval in certain situations.
**APPLICATION:** This policy applies to interchanging air lines on respirators on and after August 1, 2001.

# PART 10

# DE-ENERGIZATION AND LOCKOUT

Part 10 of the *Occupational Health and Safety Regulation* sets out various requirements relating to the de-energization and lockout of machinery and equipment.

**RE: De-Energization and Lockout – When Lockout Required (Automatic) J-Bar Sorting Systems**

**ITEM: R10.3-1**

# BACKGROUND

## 1. Explanatory Notes

Section 10.3 sets out requirements for locking out machinery and equipment. Other requirements are found in sections 4.3 and 12.15.

## 2. The Regulation

Section 10.3:

(1) If machinery or equipment is shut down for maintenance, no work may be done until

- (a) all parts and attachments have been secured against inadvertent movement,
- (b) where the work will expose workers to energy sources, the hazard has been effectively controlled, and
- (c) the energy isolating devices have been locked out as required by this Part.

(2) If machinery or equipment is in use for normal production work, subsection (1) applies if a work activity creates a risk of injury to workers from the movement of the machinery or equipment, or exposure to an energy source, and the machinery or equipment is not effectively safeguarded to protect the workers from the risk.

Section 4.3:

(1) The employer must ensure that each tool, machine and piece of equipment in the workplace is

- (a) capable of safely performing the functions for which it is used, and
- (b) selected, used and operated in accordance with
  - (i) the manufacturer's recommendations and instructions, if available,

(ii) safe work practices, and
(iii) the requirements of this Regulation.

(2) Unless otherwise specified by this Regulation, the installation, inspection, testing, repair and maintenance of a tool, machine or piece of equipment must be carried out

(a) in accordance with the manufacturer's instructions and any standard the tool, machine or piece of equipment is required to meet, or
(b) as specified by a professional engineer.

(3) A tool, machine or piece of equipment determined to be unsafe for use must be identified in a manner which will ensure it is not inadvertently returned to service until it is made safe for use.

(4) Unless otherwise specified by this Regulation, any modification of a tool, machine or piece of equipment must be carried out in accordance with

(a) the manufacturer's recommendations and instructions, if available,
(b) safe work practices, and
(c) the requirements of this Regulation.

Section 12.15:

Effective means of restraint must be used

(a) on a connection of a hose or a pipe if inadvertent disconnection could be dangerous to a worker,
(b) if unplanned movement of an object or component could endanger a worker, or
(c) to secure an object from falling and endangering a worker.

## POLICY

Entry into bin areas of automatic J-Bar sorting systems, either above or below the lifts, is prohibited unless the system is locked-out in accordance with section 10.3.

In addition to lock-out, the following is required:

(a) when maintenance, repair work, routine clean-up, or inspection requires entry into the bin area, the lifts must be lowered onto positive mechanical stops of adequate size, or onto the bin removal chains. Safety stops must not be depended on to withstand the impact of a falling lift; or

(b) when circumstances require entry of a worker into a bin to clear a lumber hang-up which prevents lowering of the lift onto a positive stop, the lift must be restrained in accordance with section 12.15.

Guarding of bin removal chain drives is not required as this is a restricted access area and the system must be locked out before entry is permitted.

It is the employer's responsibility to:

(a) obtain documentation (documentation from the equipment manufacturer is acceptable) that the blocking equipment or restraining devices are capable of performing the functions for which they are to be used under section 4.3(1)(a); and

(b) maintain the equipment as specified by the manufacturer as required by section 4.3(2).

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| | |
|---|---|
| **EFFECTIVE DATE:** | April 1, 2001 |
| **AUTHORITY:** | ss. 10.3, 4.3 and 12.15, *Occupational Health and Safety Regulation* |
| **CROSS REFERENCES:** | |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br>Housekeeping changes were made on March 1, 2005 to reflect the October 29, 2003 changes to the *Occupational Health and Safety Regulation ("OHSR")*. This Item originally replaced Policy No. 62.60 of the former Prevention Division *Policy and Procedure Manual*.<br>Effective October 29, 2003, the reproduction of section 4.3 of the *OHSR* in this Item was revised to reflect its amendment.<br>This Item results from the 2000/2001 "editorial" consolidation of all prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 62.60, as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 62.60 was issued. |
| **APPLICATION:** | This policy applies to locking out Automatic J-Bar Sorting Systems on and after April 1, 2001. |

# PART 16

# MOBILE EQUIPMENT

Part 16 of the *Occupational Health and Safety Regulation* sets out requirements relating to:

- general matters;
- guards;
- seat requirements and rider restrictions;
- seat belts;
- operating requirements;
- tire servicing; and
- all-terrain vehicles.

**RE: Mobile Equipment – General Requirements – Operation and Maintenance (Fuel Tank Filler and Vent Outlet Locations)**

**ITEM: R16.3-2**

# BACKGROUND

## 1. Explanatory Notes

Section 4.3(1) requires that equipment be operated in accordance with safe work practices.

## 2. The Regulation

Section 4.3(1):

> The employer must ensure that each tool, machine and piece of equipment in the workplace is
>
> (a) capable of safely performing the functions for which it is used, and
> (b) selected, used and operated in accordance with
>  (i) the manufacturer's instructions, if available,
>  (ii) safe work practices, and
>  (iii) the requirements of this Regulation.

# POLICY

A fuel tank fill point or tank vent opening is not permitted within the enclosed cab of a vehicle. This condition is most likely to arise when a winter cab enclosure is installed on a vehicle.

Officers finding a tank fill point, or a vent outlet within a worker-occupied enclosure on a vehicle, will require extension of the filler and/or vent line to safe locations outside the cab. The connection between the extension and the original opening must be liquid and vapour tight to prevent fuel leakage or vapour release into the enclosure.

If the feasibility of doing the modifications appears doubtful, officers will discuss their concerns with a Board engineer before issuing orders.

**EFFECTIVE DATE:** April 1, 2001
**AUTHORITY:** s. 4.3(4), Occ*upational Health and Safety Regulation*
**CROSS REFERENCES:**
**HISTORY:** Housekeeping changes effective September 15, 2010 to update Regulation provisions due to repeal of Section 16.3(4), delete practice reference and make formatting changes.
Replaces Policy No. 26.02-3 of the Prevention Division *Policy and Procedure Manual*
**APPLICATION:** This Item results from the 2000/2001 "editorial" consolidation of all prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 26.02-3, as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 26.02-3 was issued.

**RE: Mobile Equipment – Guards – Protective Structures (Hydraulic Excavators)** **ITEM: R16.21-1**

# BACKGROUND

## 1. Explanatory Notes

Section 16.21 sets out requirements for protection of operators of mobile equipment from various hazards.

## 2. The Regulation

Section 16.21(1):

Operators of mobile equipment must be protected against falling, flying or intruding objects or material by means of suitable cabs, screens, grills, shields, deflectors, guards or structures.

Section 16.21(2), in part:

The means of protection must meet the requirements of the following applicable standard:

(a) *WCB Standard – G601, Standard for Log Loader and Log Yarder Backstops;*
(b) *WCB Standard – G602, Standard for Log Loader and Log Yarder Raised Cabs;*
(c) *WCB Standard – G603, Standard for Log Loader and Log Yarder Window Guards;*
(d) *WCB Standard – G604, Standard for Light-Duty Screen Guards for Off-Highway Equipment;*
(e) *WCB Standard – G605, Standard for Mobile Equipment Half-Doors;*
(f) *WCB Standard – G607, Standard for Medium Duty Screen Guards – Front End Log Loader;*
(g) *WCB Standard – G608, Standard for Mobile Equipment Roof Structures – Heavy Duty;*
(h) *WCB Standard – G609, Standard for Mobile Equipment Roof Structures – Light Duty ….*

# POLICY

The standards referenced in Section 16.21(2) mean that the minimum operator protection expected on hydraulic excavators exposed to hazards caused by intruding or flying objects, such as loose debris, snags, tree trunks, or limbs, normally encountered in pioneering steep side hill logging grades and right-of-way construction, is:

WCB G602 - cab structure designed to resist a force of at least 2,000 lbs. (simulating a blunt log impact at 3.9 miles per hour), and an alternate exit meeting the requirements of Section 16.17.

WCB G603 - window guards (mild steel bars or rods with a maximum opening of 64 square inches) on the front, sides (where permitted by boom clearance), and back of the cab where there is a hazard of intruding or flying objects.

WCB G608 - heavy duty roof structure (able to absorb 8500 foot - pounds of energy). SAE J1043 - Minimum Performance Criteria for Falling Object Protective Structures for Industrial Equipment or equivalent standard is an accepted option under G608.

Polycarbonate at least ¼ inch thick and supported from behind with at least a one inch overlap along the perimeter is an adequate substitute for WCB Standard G604 light duty wire screen or brush guards.

Polycarbonate at least ½ inch thick and adequately supported from behind along the perimeter and by members in one direction not more than 10 inches apart may be an adequate substitute for G603 window guards. Consult with the WCB Engineering Section for assistance in assessing G603 window guards with polycarbonate.

| | |
|---|---|
| **EFFECTIVE DATE:** | April 1, 2001 |
| **AUTHORITY:** | s. 16.21, *Occupational Health and Safety Regulation* |
| **CROSS REFERENCES:** | s. 16.17, *Occupational Health and Safety Regulation* |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br>Housekeeping changes were made on March 1, 2005 to reflect the October 29, 2003 changes to the *Occupational Health and Safety Regulation ("OHSR")*. This Item originally replaced Policy No. 26.16(1) of the former Prevention Division *Policy and Procedure Manual*.<br>Effective October 29, 2003, the reproduction of section 16.21(2) of the *OHSR* in this Item was revised to reflect its amendment.<br>This Item results from the 2000/2001 "editorial" consolidation of all Prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 26.16(1), as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 26.16(1) was issued. |
| **APPLICATION:** | This policy applies to protective structures for hydraulic excavators on and after April 1, 2001. |

**RE: Mobile Equipment – Guards – Rollover Protective Structures (Pipe Layers or Side Boom Tractors)**

**ITEM: R16.22-1**

# BACKGROUND

## 1. Explanatory Notes

Section 16.22(1) requires that certain types of mobile equipment, weighing 700 kg (1,500 lbs) or more, must have protective rollover structures. Included in the list of equipment are pipe layers or side boom tractors manufactured after January 1, 2000.

## 2. The Regulation

Section 16.22(1) in part:

> The following types of mobile equipment, weighing 700 kg (1,500 lbs) or more, must have rollover protective structures (ROPS):
>
> …
>
> (h) pipe layers or side boom tractors manufactured after January 1, 2000.

# POLICY

Pipe layers or side boom tractors manufactured before January 1, 2000 are exempt from the requirement for ROPS.

However, although not required, the fitment of a ROPS canopy should be encouraged where possible in such cases.

If a ROPS is not fitted, the employer must provide the operator with detailed safe work procedures which, when followed, will minimize the possibility of machine roll over.

**EFFECTIVE DATE:** April 1, 2001
**AUTHORITY:** s. 16.22(1)(h), *Occupational Health and Safety Regulation*
**CROSS REFERENCES:**
**HISTORY:** Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.
Replaces Policy No. 26.16(3)(b) of the Prevention Division *Policy and Procedure Manual*
**APPLICATION:** This Item results from the 2000/2001 "editorial" consolidation of all Prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 26.16(3)(b), as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 26.16(3)(b) was issued.

**RE: Mobile Equipment – Guards – ROPS Certification (Sweep Arms)**

**ITEM: R16.24-1**

# BACKGROUND

## 1. Explanatory Notes

Section 16.24 sets out the requirements for certification of ROPS and changes to ROPS.

## 2. The Regulation

Section 16.24:

(1) A ROPS must be certified by the ROPS manufacturer or a professional engineer as meeting a standard specified in section 16.23.

(2) Any addition, modification, welding or cutting on a ROPS must be done in accordance with the instructions of and be recertified by the ROPS manufacturer or a professional engineer.

# POLICY

The sweep arms on rubber-tired skidders are intended to deflect material away from in front of the canopy. Sweep arms occasionally get damaged (bent or deformed) through contact with large trees or logs.

Where the sweep arm is an integral part of the ROPS on a skidder, the ROPS must be replaced or recertified when structural damage to the sweep arm is observed.

Damage to the sweep arm alone does not invalidate the ROPS certification where the sweep arm is not an integral part of the ROPS.

**EFFECTIVE DATE:** April 1, 2001
**AUTHORITY:** s.16.24, Occ*upational Health and Safety Regulation*
**CROSS REFERENCES:**
**HISTORY:** Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.
Replaces Policy No. 26.16(2)-2 of the Prevention Division *Policy and Procedure Manual*

**APPLICATION:** This Item results from the 2000/2001 "editorial" consolidation of all prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 26.16(2)-2, as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 26.16(2)-2 was issued. The references to specific brand names in Policy No. 26.16(2)-2 have been deleted as not being appropriate for inclusion in policy.

# PART 17

# TRANSPORTATION OF WORKERS

Part 17 of the *Occupational Health and Safety Regulation* sets out requirements relating to:

- general matters;
- crew cars, buses and crummies;
- marine craft; and
- aircraft.

**RE: Transportation of Workers – Crew Cars, Buses and Crummies – Seating Design** **ITEM: R17.12-1**

# BACKGROUND

## 1. Explanatory Notes

Section 17.12 sets out the seating design requirements for crew cars, buses and crummies used to transport workers.

## 2. The Regulation

Section 17.12:

A worker transportation vehicle must be equipped with seats that

(a) are safely located and securely attached to the vehicle, with a width of at least 41 cm (16 in) for each passenger and an upholstered seat and seat back which provide normal and comfortable seating for passengers,
(b) face to the front or rear of the vehicle, unless installed otherwise by the vehicle manufacturer, and
(c) provide a spacing of at least 66 cm (26 in) measured between the face of the seat back at seat level and the back of the seat or other fixed object in front.

# POLICY

Where seats are installed facing each other, each seat will be considered the "fixed object in front" for purposes of section 17.12(c) and the spacing of at least 66 cm (26 in) will be measured between the face of one seat back at seat level and the front edge of the facing seat.

**EFFECTIVE DATE:** April 1, 2001
**AUTHORITY:** s. 17.12(c), *Occupational Health and Safety Regulation*
**CROSS REFERENCES:**
**HISTORY:** Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.
Replaces part of Policy No. 28.12(1) of the Prevention Division *Policy and Procedure Manual*
**APPLICATION:** This Item results from the 2000/2001 "editorial" consolidation of all Prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 28.12(1), as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 28.12(1) was issued.

# PART 19

# ELECTRICAL SAFETY

Part 19 of the *Occupational Health and Safety Regulation* sets out requirements relating to:

- general electrical matters;
- working on low voltage electrical equipment;
- working on high voltage electrical equipment;
- working on de-energized high voltage power systems;
- working close to energized high voltage equipment and conductors;
- tree pruning and falling near energized conductors;
- control systems; and
- electrofishing.

**RE: Electrical Safety – Working Close to Energized High Voltage Equipment and Conductors** **ITEM: R19.25-1**

# BACKGROUND

## 1. Explanatory Notes

Section 19.24.1 requires, in part, that employers ensure that a specified minimum distance is maintained between high voltage electrical equipment and conductors and workplace equipment. If this specified minimum safe distance cannot be maintained, section 19.25 requires that an employer must obtain a written assurance of certain matters from a representative of the power system.

## 2. The Regulation

Section 19.24.1:

> Subject to section 19.24.2, or unless otherwise permitted by this Part, if exposed electrical equipment or conductors at a workplace have a voltage within a range set out in Column 1 of Table 19-1A, the following must remain at least the distance from the exposed electrical equipment and conductors that is set out in Column 2 opposite that range of voltage:
>
> (a) a person working at the workplace;
>
> (b) a tool, a machine, material or equipment at the workplace.

**Table 19-1A**

| Column 1 **Voltage** | Column 2 **Minimum approach distance for working close to exposed electrical equipment or conductors** | |
|---|---|---|
| **Phase to phase** | **Metres** | **Feet** |
| **Over 750 V to 75 kV** | 3 | 10 |
| **Over 75 kV to 250 kV** | 4.5 | 15 |
| **Over 250 kV to 550 kV** | 6 | 20 |

Section 19.25, in part:

(1) If the minimum distance in Table 19-1A cannot be maintained because of the circumstances of work or the inadvertent movement of persons or equipment, an assurance in writing on a form acceptable to the Board and signed by a representative of the owner of the power system, must be obtained.

(2) The assurance must state that while the work is being done the electrical equipment and conductors will be displaced or rerouted from the work area, if practicable.

(3) If compliance with subsection (2) is not practicable the assurance must state that the electrical equipment will be isolated and grounded, but if isolation and grounding is not practicable the assurance must state that the electrical equipment will be visually identified and guarded.

## POLICY

The minimum distances specified in section 19.24.1 and Table 19-1A must be taken into account when planning the operation of a crane or other equipment close to overhead electrical conductors. If the operation is planned, with due regard to the environmental conditions, the condition of the equipment, the capability of the operators, and the movement of material, so that no part of the equipment, workers, or material come within the stipulated minimum distance, an assurance in writing under section 19.25(1) is not required.

For the purposes of section 19.24.1, if no other effective means is provided to assist the operator of a tower crane in maintaining the minimum distance:

- the crane must have a marker placed at an appropriate position on the jib; and
- the employer must specifically instruct the operator that, when the jib is in a position such that the load line could enter within the minimum applicable distance, the trolley must be positioned only on the mast side of the marker.

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**EFFECTIVE DATE:** October 29, 2003
**AUTHORITY:** ss.19.25 and 19.24.1, Occ*upational Health and Safety Regulation*
**CROSS REFERENCES:**
**HISTORY:** Housekeeping changes effective February 1, 2011 to reflect regulation changes effective on that date.
Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.

Effective April 1, 2001, this Item replaced Policy No. 24.04(1) of the former Prevention Division *Policy and Procedure Manual*. Effective October 29, 2003, the policy incorporated a paragraph from Item R14.53-1 which was deleted in response to the duplication and redundancy package of regulatory amendments.

**APPLICATION:** This policy applies to all instances where workplace equipment comes in close proximity to high voltage electrical equipment and conductors on and after October 29, 2003.

**RE: Electrical Safety – Tree Pruning and Falling Near Energized Conductor – Preliminary Inspection**

**ITEM: R19.30-1**

# BACKGROUND

## 1. Explanatory Notes

Section 19.30 sets out requirements for preliminary inspections to identify hazardous areas prior to commencing tree-pruning and falling near energized conductors. Included in the inspection is whether any part of the tree to be pruned or felled is, or may be, within the minimum distance specified in Section 19.24.1 and Table 19-1A.

## 2. The Regulation

Section 19.30:

(1) Before commencing tree pruning or falling close to energized high voltage overhead conductors, the worksite must be inspected by a qualified person, authorized by the owner of the power system, to identify any hazardous areas, including situations where any part of a tree to be pruned or felled is within the applicable minimum distance from an energized conductor as specified in Table 19-1A, or may fall within that distance.

(2) Immediately before commencing work, an inspection must be performed by a qualified person to verify the results of the initial inspection done under subsection (1) are still valid.

Section 19.24.1:

Subject to section 19.24.2, or unless otherwise permitted by this Part, if exposed electrical equipment or conductors at a workplace have a voltage within a range set out in Column 1 of Table 19-1A, the following must remain at least the distance from the exposed electrical equipment and conductors that is set out in Column 2 opposite that range of voltage:

(a) a person working at the workplace;

(b) a tool, a machine, material or equipment at the workplace.

**Table 19-1A**

| Column 1<br>**Voltage** | Column 2<br>**Minimum approach distance for working close to exposed electrical equipment or conductors** | |
|---|---|---|
| **Phase to phase** | **Metres** | **Feet** |
| **Over 750 V to 75 kV** | 3 | 10 |
| **Over 75 kV to 250 kV** | 4.5 | 15 |
| **Over 250 kV to 550 kV** | 6 | 20 |

# POLICY

Tree trimmers intending to work close to energized high voltage lines must call the utility to request a qualified person to perform the preliminary inspection under section 19.30(1). The following guidelines are to be used in determining if tree-trimming is close to energized high voltage overhead conductors:

- any part of the tree, as it stands near an energized line, is within the general limits of approach specified in section 19.24.1;
- any branches are above an energized line in such a way that any severed portion may fall within the general limits of approach of section 19.24.1; or
- any contemplated topping operation will produce a cut length capable of extending from the tree to within the limits of approach of section 19.24.1.

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**EFFECTIVE DATE:** April 1, 2001
**AUTHORITY:** ss.19.30 and 19.24.1, Occ*upational Health and Safety Regulation*
**CROSS REFERENCES:**
**HISTORY:** Housekeeping changes effective February 1, 2011 to reflect regulation changes effective on that date.
Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.
Replaces Policy No. 24.08(1) of the Prevention Division *Policy and Procedure Manual*
**APPLICATION:** This Item results from the 2000/2001 "editorial" consolidation of all prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 24.08(1), as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 24.08(1) was issued.

# PART 20

# CONSTRUCTION, EXCAVATION AND DEMOLITION

Part 20 of the *Occupational Health and Safety Regulation* sets out requirements relating to:

- general matters;
- safe work areas and safe access;
- bridges and similar structures;
- concrete formwork and falsework;
- tilt-up building construction;
- concrete pre-stressing and post-tensioning;
- open web joists and trusses;
- roof work;
- excavations;
- scaling operations;
- pile driving and dredging;
- demolition; and
- work in compressed air.

**RE: Construction, Excavation and Demolition – Concrete Formwork and Falsework – Specifications and Plans**

**ITEM: R20.17-1**

# BACKGROUND

## 1. Explanatory Notes

Section 20.17 sets out the requirements for specifications and plans for concrete formwork and falsework.

## 2. The Regulation

Section 20.17:

(1) The employer must ensure that a set of plans and specifications meeting the requirements of *CSA Standard S269.1-1975, Falsework for Construction Purposes and CSA Standard CAN/CSA-S269.3-M92, Concrete Formwork* is prepared for the formwork for each job and for all items of concrete work, the failure of which could cause injury.

(2) Erection drawings and supplementary instructions for concrete formwork, falsework and reshoring must be certified by a professional engineer and available at the site during erection, use and removal of the concrete formwork, falsework and reshoring.

(3) The following types of concrete formwork require erection drawings and supplementary information certified by a professional engineer:

(a) flyforms;

(b) gang forms;

(c) jump forms;

(d) vertical slip forms;

(e) formwork more than 4 m (13 ft) in height;

(f) suspended forms for slabs, stairs and landings;

(g) beam forms;

(h) single sided forms over 2 m (6.5 ft) in height;

(i) cantilever forms;

(j) bridge deck forms;

(k) shaft lining forms;

(l) tunnel lining forms;

(m) forms so designated by the designer of the structure.

## POLICY

Occasionally a portion of formwork and falsework may be designed as part of a sales or rental subcontract by a scaffold and shoring supplier, or designed as part of the permanent structure by the design engineer for the structure.

Generally, the "partial designs" supplied in such cases are certified by a professional engineer, but do not contain all the information and instructions required by the *Regulation*. Typically, documents are deficient in the area of section views, packing, blocking, and form details. Reshoring, where required, is either not specified or not referenced. There may also be a statement in such documents indicating or implying the documents do not satisfy the requirements of the *Regulation* without further detailing.

These documents are not acceptable unless additional detailing and documentation, certified by a professional engineer, are available at the site for the portions of the design not covered by the "partial designs" referred to above.

It is the responsibility of the employer to ensure the erection drawings and any supplementary instructions are complete and comply with the *Regulation*.

An "inspection certificate" issued by an engineer prior to pour, based on incomplete erection drawings and supplementary instructions, is not valid.

Officers will order concrete placing stopped if the inspection certificate is not available at the site or is not valid.

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| **EFFECTIVE DATE:** | April 1, 2001 |
| **AUTHORITY:** | s. 20.17, Occ*upational Health and Safety Regulation* |
| **CROSS REFERENCES:** | s. 20.18 – 20.26, *Occupational Health and Safety Regulation* |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br>Housekeeping changes were made on March 1, 2005 to reflect the October 29, 2003 changes to the *Occupational Health and Safety Regulation ("OHSR")*. This Item originally replaced Policy No. 34.28(6) of the former Prevention Division *Policy and Procedure Manual*.<br>Effective October 29, 2003, the reproduction of section 20.17(1) of the *OHSR* in this Item was revised to reflect its amendment. |

This Item results from the 2000/2001 "editorial" consolidation of all prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 34.28(6), as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 34.28(6) was issued.

**APPLICATION:** This policy applies to certified plans and specifications for formwork and falsework on and after April 1, 2001.

**RE: Construction, Excavation and Demolition – Open Web Joists and Trusses – Erection Instructions (All-Wood Plate-Connected Open Web Trusses)**

**ITEM: R20.72-1**

# BACKGROUND

## 1. Explanatory Notes

Section 20.72 requires that written instructions from a professional engineer or the manufacturer be available at the worksite before work is undertaken on the erection of premanufactured open web joists and trusses.

## 2. The Regulation

Section 20.72:

(1) Work must not be undertaken on the erection of premanufactured open web joists and trusses until clear and appropriate written instructions from a professional engineer or the manufacturer of the joists or trusses, detailing safe erection procedures, are available at the worksite.

(2) Erection and temporary bracing of open web joists and trusses must be done in accordance with the written instructions required by subsection (1).

# POLICY

This policy applies to all-wood plate-connected open web flat and pitched trusses. It does not apply to multi-member chord types or pin-connected, wood chord-metal tube web-type trusses (Trus Joists).

The employer responsible for the handling and installation of the trusses must have clear and appropriate written instructions from the truss manufacturer or a professional engineer, stipulating safe erection procedures. The truss manufacturer will normally provide some General Recommended Erection and Bracing Instructions with delivery of the trusses.

Officers will stop truss erection when:

- erection and bracing instructions are not available at the site or are obviously incomplete;
- work is not being done in accordance with the erection and bracing instructions;
- the side walls or skeletal structural building frame are inadequately braced (Typically, the recommended maximum spacing braces on walls is 30 feet or 10 metres.);
- damaged trusses (including twisted webs, bent connector plates, cracked chords) are being or have been installed; or
- heavy loads are being applied to trusses before all bracing, bridging and decking has been installed.

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| **EFFECTIVE DATE:** | April 1, 2001 |
| **AUTHORITY:** | s. 20.72, *Occupational Health and Safety Regulation* |
| **CROSS REFERENCES:** | s. 191, *Workers Compensation Act* |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.<br>Replaces Policy No. 34.42-1 of the Prevention Division *Policy and Procedure Manual* |
| **APPLICATION:** | This Item results from the 2000/2001 "editorial" consolidation of all Prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 34.42-1, as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 34.42-1 was issued. |

# PART 24

# DIVING, FISHING AND OTHER MARINE OPERATIONS

Part 24 of the *Occupational Health and Safety Regulation* sets out requirements relating to:

- wharves, docks and mooring floats; and

- diving operations:
  - general matters;
  - scuba diving;
  - surface supply diving;
  - deep diving;
  - altitude diving;
  - specific diving hazards;
  - live boating; and

- fishing operations:
  - general matters;
  - specific fishing operations:
    - gillnetting;
    - handlining;
    - longlining;
    - seining;
    - trap fishing;
    - trawling; and
    - trolling.

**RE: Fishing Operations - Equipment Control Devices** **ITEM: R24.87-1**

# BACKGROUND

## 1. Explanatory Notes

Section 24.87 sets out requirements for equipment control devices.

## 2. The Regulation

Section 24.87:

(1) Winches, drums, capstans, and similar equipment on board a fishing vessel must have at least one master on/off control that is readily accessible on deck.

(2) Drum pedals and other types of hold-to-run controls must not be bypassed or otherwise rendered ineffective.

# POLICY

On a vessel operated by one person, section 24.87 is satisfied by the regular control switch on each piece of equipment. On vessels operated by more than one person, there must be another switch or switches away from the equipment at a central location on the deck.

Where another switch or switches are located away from the equipment, the “on” control should only be activated when the equipment can be seen and/or the operator has determined that the equipment is safe to be turned on.

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**EFFECTIVE DATE:** January 1, 2019
**AUTHORITY:** s.24.87, *Occupational Health & Safety Regulation*
**CROSS REFERENCES:**
**HISTORY:** Changes effective January 1, 2019 made to clarify the policy.
Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.
Replaces Policy No. 85.21 of the Prevention Division *Policy and Procedure Manual*
This Item results from the 2000/2001 “editorial” consolidation of all prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 85.21, as they existed prior to the Effective Date, with any wording changes

necessary to reflect legislative and regulatory changes since Policy No. 85.21 was issued.

APPLICATION: This item applies to all inspections that occur on or after January 1, 2019.

# PART 26

# FORESTRY OPERATIONS

Part 26 of the *Occupational Health and Safety Regulation* sets out requirements relating to:

- general matters;
- falling and bucking;
- yarding and skidding;
- landings and log dumps;
- hauling;
- roads and road maintenance; and
- water operations.

**RE: Forestry Operations – General Requirements – Dangerous Trees (Removal Prior to Silviculture Activities)**

**ITEM: R26.11-1**

# BACKGROUND

## 1. Explanatory Notes

Section 26.11 sets out the requirements for removal of dangerous trees where forestry operations are taking place.

## 2. The Regulation

Section 26.1:

*"dangerous tree"* means a tree that is a hazard to a worker due to

(a) its location or lean,
(b) its physical damage,
(c) overhead conditions,
(d) deterioration of its limbs, stem or root system, or
(e) any combination of the conditions in paragraphs (a) to (d);

Section 26.11:

(1) If it is known or reasonably foreseeable that work will expose a worker to a dangerous tree,

(a) the tree must be felled, or
(b) a risk assessment of the tree must be undertaken by a person who has completed a training program acceptable to the Board.

(2) If a risk assessment under subsection (1) determines that a tree poses a risk to a worker, the recommendations made in the risk assessment for eliminating or minimizing the risk must be implemented before the work referred to in that subsection starts.

(3) Despite subsections (1) and (2), if work in a forestry operation is to be carried out in an area that has more than 500 dangerous trees per hectare, the Board may approve a request to work without felling or assessing all the dangerous trees if, before the work starts,

(a) a person who has completed a training program acceptable to the Board conducts a risk assessment of a representative sample of the dangerous trees, and
(b) any recommendations made in the risk assessment for eliminating or minimizing the risks are implemented.

## POLICY

Silviculture activities include tree planting, juvenile spacing, tree thinning, surveys, cone collecting, brush or weed control and chemical use in tree thinning practices.

Except where section 26.11 applies, the responsibility for ensuring that dangerous trees are removed rests with the B.C. Ministry of Forests, owner, licensee or contractor responsible for the work. The felling of dangerous trees is not to be carried out in conjunction with silviculture activities. Dangerous tree removal must be undertaken before silviculture workers are permitted into the hazard area. It is also the B.C. Ministry of Forests, owner, licensee or contractor's responsibility to ensure all falling activities are carried out by trained and competent fallers. Failure to comply with these requirements will result in orders being issued on the B.C. Ministry of Forests, owner, licensee, or contractor.

This policy does not relieve any sub-contractor of responsibility for compliance with the *Regulation*.

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| **EFFECTIVE DATE:** | April 1, 2001 |
| **AUTHORITY:** | s.26.11, *Occupational Health and Safety Regulation* |
| **CROSS REFERENCES:** | s.118, *Workers Compensation Act*, ss.26.2 and 26.21, *Occupational Health and Safety Regulation* |
| **HISTORY:** | Housekeeping changes effective September 15, 2010 to update Regulation provisions and consequential changes to text, delete practice reference and make formatting changes.<br>Replaces Policy No. 60.14 of the Prevention Division *Policy and Procedure Manual* |
| **APPLICATION:** | This Item results from the 2000/2001 “editorial” consolidation of all prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 60.14, as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 60.14 was issued. |

**RE: Forestry Operations – Water Operations – Boat Equipment (Towline Guards and OPS for Boom Boats)**

**ITEM: R26.86-1**

# BACKGROUND

## 1. Explanatory Notes

Section 26.86(1)(c) and (d) sets out requirements for suitable cabins, screens or guards in certain circumstances for operators of boats used in or about a forestry operation.

## 2. The Regulation

Section 26.86(1) in part:

A boat must be equipped with

…

(c) suitable cabins, screens or guards to protect operators against injury from towline breakage if the boats are regularly required to pull logs, booms or barges,

(d) suitable cabins, screens or guards meeting the requirements of *WCB Standard G606, Boom Boat Operator Protective Structures* if operators are subject to injury from logs or limbs intruding into the control area ….

# POLICY

Towline guards are only required on boats used primarily for towing.

Operator Protective Structures (OPS) are only required on boats used to break "jackpots". Jackpots are piles of logs resulting from self-dumping barges.

**EFFECTIVE DATE:** April 1, 2001
**AUTHORITY:** s. 26.86(1)(c) and (d), *Occupational Health and Safety Regulation*
**CROSS REFERENCES:**
**HISTORY:** Housekeeping changes effective September 15, 2010 to delete practice reference and make formatting changes.
Housekeeping changes were made on March 1, 2005 to reflect the October 29, 2003 changes to the *Occupational Health and Safety Regulation ("OHSR")*. This Item originally replaced Policy No. 60.260(6) and (7) of the former Prevention Division *Policy and Procedure Manual*. Effective October 29, 2003, the reproduction of section 26.86(1)(d) of the *OHSR* in this Item was revised to reflect its amendment.
This Item results from the 2000/2001 "editorial" consolidation of all Prevention policies into the *Prevention Manual*. The POLICY in this Item merely continues the substantive requirements of Policy No. 60.260(6)&(7), as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and regulatory changes since Policy No. 60.260(6)&(7) was issued.
**APPLICATION:** This policy applies to towline guards and operator protective structures for boom boats on and after April 1, 2001.

# PART 30

# LABORATORIES

Part 30 of the *Occupational Health and Safety Regulation* sets out requirements relating to:

- general matters; and
- specific substances and procedures.

**RE: Laboratories – General Requirements – Fume Hoods (Ventilation Systems)** **ITEM: R30.8-1**

# BACKGROUND

## 1. Explanatory Notes

Section 30.8 sets out the general requirements relating to fume hoods in laboratories.

## 2. The Regulation

Section 30.8:

(1) A laboratory fume hood and its related ductwork must be designed, installed and maintained in accordance with the *Industrial Ventilation, A Manual of Recommended Practice*, published by the American Conference of Governmental Industrial Hygienists, as amended from time to time.

(2) A laboratory fume hood must

(a) be connected to a local exhaust ventilation system,
(b) provide average face velocities of 0.4 m/s (80 fpm) to 0.6 m/s (120 fpm) across the operational face opening,
(c) not have face velocities of less than 80% of the average face velocity required in paragraph (b) at any point across its operational face opening, and
(d) not have face velocities of more than 120% of the average face velocity required in paragraph (b) at any point across its operational face opening.

(2.1) A laboratory fume hood must have a sash that is positioned to protect the upper body and face of a worker working in the laboratory fume hood from accidental releases of the contents of the hood while allowing hand and arm access to equipment inside the hood.

(2.2) A laboratory fume hood with a movable sash must be clearly marked to identify the maximum size of the operational face opening that will maintain the average face velocities required in subsection (2) (b).

(2.3) The employer must ensure

(a) that before it is used, a commercially manufactured laboratory fume hood has been certified as being tested by the manufacturer, and
(b) following installation and before it is used, a custom built laboratory fume hood is tested on site by a qualified person.

(2.4) A laboratory fume hood tested under subsection (2.3) must demonstrate containment not greater than the control level of 0.05 ppm when tested under "as manufactured " test conditions in accordance with the methods described in ANSI/ASHRAE Standard 110-1995, Method of Testing Performance of Laboratory Fume Hoods.

(2.5) The installation of a laboratory fume hood must be certified by a professional engineer.

(3) A laboratory fume hood must be located to prevent cross drafts or other disruptive forces from lowering the air flow across the operational face opening to unacceptable levels.

(4) A laboratory fume hood and its ductwork must be constructed from materials compatible with its use.

(5) A laboratory fume hood that will be or is being used for working with

(a) radioactive material in amounts that exceed the exemption quantity specified by the Canadian Nuclear Safety Commission, or
(b) perchloric acid

must be clearly labelled with applicable restrictions on its use.

(6) A laboratory fume hood must not be used for storage of chemicals unless it is used exclusively for this purpose and is labelled with this limitation.

(7) Controls for the operation of a laboratory fume hood and its service fixtures must be

(a) located on the outside of the laboratory fume hood, and
(b) immediately accessible to the worker conducting work in the laboratory fume hood.

(8) Despite subsection (7), water taps may be located inside a laboratory fume hood if the main shutoff valve for the water is located outside the laboratory fume hood.

(9) Equipment being used in a laboratory fume hood must

(a) be kept at least 15 cm (6 in.) from the operational face opening of the laboratory fume hood, and
(b) not adversely affect airflow into the laboratory fume hood.

(10) Written procedures must be developed and implemented to ensure safe use and operation of a laboratory fume hood.

Section 30.9:

(1) Face velocities over the operational face opening of a laboratory fume hood must be quantitatively measured and recorded.

(2) The ability of a laboratory fume hood to

(a) maintain an inward flow of air across the operational face opening, and
(b) contain contaminants

must be assessed and recorded using a smoke tube or other suitable qualitative method.

(3) The actions described in subsections (1) and (2) must be performed

(a) after the laboratory fume hood is installed and before it is used,
(b) at least once in each 12 month period after installation, and
(c) after any repair or maintenance that could affect the air flow of the hood.

(4) If a laboratory fume hood is found to be operating with an average face velocity of less than 90% of the average face velocity required in section 30.8 (2), the employer must immediately take corrective action to bring the average face velocity within the required range of velocities.

(5) Airflow in a laboratory fume hood must be monitored continuously if loss of airflow will result in risk to a worker.

(6) A laboratory fume hood that is being installed must have an alarm capable of indicating when the average face velocity falls below the minimum average face velocity level required in section 30.8 (2) when the hood is in use.

# POLICY

Section 30.8(2) specifies fume hood exhaust ventilation rates in terms of air velocities measured over the operational face area of the hood. The operational face area is determined by the height of the sash and will vary with the work carried out in the fume hood.

The air velocity is the average of measurements made over 6 points at the operational face of the hood with the sash raised to its highest position. A calibrated anemometer must be used.

If the measured average velocity is less than specified in section 30.8(2), repeated measurements must be made with the sash lowered successively until the specified average air velocity is attained. The sash height where this is determined must be marked in accordance with section 30.8(2.2). The minimum sash height is 12 inches.

If the fume hood cannot be used at the height determined above, modification is required to improve the ventilation so the specified air velocities are maintained at the sash height required for the work performed in the fume hood.

Smoke tube tests must be done to determine whether conditions of air turbulence exist at the face of the hood. If conditions of severe turbulence exist so that air spills out past the hood face, the condition must be corrected.

When a sash height adjustment is necessary on a fume hood that is part of a manifolded system (several hoods serviced by a single exhaust fan), all fume hoods in the system must be rechecked at the completion of the adjustments to ensure face velocity compliance (this operation may have to be repeated several times before compliance is achieved).

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**EFFECTIVE DATE:** April 1, 2001
**AUTHORITY:** ss. 30.8 and 30.9, *Occupational Health and Safety Regulation*
**CROSS REFERENCES:**

**HISTORY**

Housekeeping changes effective October 14, 2011 to reflect a change in the regulation to make alarms mandatory.
Housekeeping changes effective September 15, 2010 to update Regulation provisions and consequential changes to text, delete practice reference and make formatting changes.
This Item resulted from an editorial consolidation of prevention policies into the *Prevention Manual*, which was effective on October 1, 2000. The Policy in this Item continued the substantive requirements that existed before the consolidation, with any wording changes necessary to reflect legislative and other changes that have occurred. Policy No. 76.05 in the former Prevention Division *Policy and Procedure Manual* was replaced by this Item. A housekeeping change was made on December 14, 2001. A cross-reference correction was made on March 30, 2004 to reflect regulatory amendments relating to occupational exposure limits, effective October 29, 2003.

**APPLICATION:**

The application of this policy remains unchanged from its previous authority under Policy No. 76.05 of the former Prevention Division *Policy and Procedure Manual.*

# APPENDIX 1

## RETIRED DECISIONS FROM VOLUMES 1 – 6 (DECISIONS NO. 1 – 423) OF THE *WORKERS' COMPENSATION REPORTER*

The Board of Directors Bylaw re: Policies of the Board of Directors lists the policy manuals and other documents that are policies for purposes of the *Workers Compensation Act*. Included in the list are Decisions No. 1 – 423 in volumes 1 – 6 of the *Workers' Compensation Reporter*. These Decisions consist, for the most part, of decisions made by the former commissioners on various matters between 1973 and 1991.

In order to reduce the number of sources of policies, a strategy was approved for consolidating Decisions No. 1 – 423 into the various policy manuals, as appropriate, and "retiring" the Decisions over time.

"Retire" for this purpose means that, as of the "retirement date", the Decision is no longer current policy under the Board of Directors Bylaw.

"Retiring" does not affect a Decision's status as policy prior to the date it was "retired". A "retired" Decision therefore applies in decision-making on historical issues to the extent it was applicable prior to the "retirement date". "Retiring" also does not affect the disposition of any individual matters dealt with in a Decision.

Please note that policy decisions of the former Governors and the former Panel of Administrators still in effect immediately before February 11, 2003 are numbered similarly to Decisions No. 1 – 423. Many decisions of the former Governors and the former Panel of Administrators remain policies of the Board of Directors, and have not been retired.