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MARCH 2013

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The Insider's goal is to help safety professionals do their jobs better and more easily. So tell us what you need! For example, are you unsure what the OHS laws require you to do for a certain hazard? Need help training supervisors on handling unsafe work refusals? Share your pressing safety compliance problems with us by calling (203) 987-6163 or emailing robinb@bongarde.com

Robin L. Barton Editor

LADDERS: 6 KEY FACTS ABOUT COMPLYING WITH PORTABLE LADDER REQUIREMENTS

arious types portable ladders, such as step and extension ladders, are such a common sight in many workplaces that it's easy to overlook the requirements in the OHS laws for these important tools. And the OHS regulations do have many requirements for portable ladders, covering everything from how they're constructed and maintained to how they're used. So here's a look at the portable ladder requirements in the OHS laws and how to comply with them.

EXECUTIVE SUMMARY

The Law: The OHS regulations contain requirements for the construction, maintenance and use of portable ladders, such as step and extension ladders.

6 Key Facts about Portable Ladder Requirements:

- Commercially made ladders must generally comply with designated voluntary standards from the CSA or ANSI;
- Ladders made on site must comply with detailed construction requirements in the OHS regulations;
- You must ensure that ladders are well maintained and inspected before use for any defects that could endanger workers;
- 4. Ladders, especially extension ladders, must be properly positioned, generally maintaining a 1:4
- 5. Workers must properly use ladders and not use them for unintended purposes: and
- In some cases, workers working from ladders must wear fall protection.

Tool: Ladder Inspection Form

CONTINUED INSIDE ON PAGE 2

JHSC: ANSWERS TO 12 FREQUENTLY ASKED QUESTIONS

he joint health and safety committee (JHSC) is one of the key components of an OHS program. In some ways, the committee's effectiveness can determine the program's effectiveness. JHSCs are also highly regulated under OHS law. So it's easy to get tripped up and violate the many JHSC requirements. To help you avoid such violations, here are answers to 12 questions safety professionals frequently have about JHSCs.

12 FAQs

Q: When Does a Workplace Require a JHSC?

A: The OHS laws spell out which workplaces require a JHSC (or a health and safety representative). Although there are some variations across Canada, the establishment of a JHSC usually depends primarily on how many workers are in the workplace:

• Zero to four workers: Neither a JHSC nor a health and safety representative are required;

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Defining Our Terms

This article covers the general requirements for portable ladders, such as step ladders and extension ladders—not for ladders that are fixed in place, which have their own requirements, or for specialized ladders, such as orchard ladders.

5 AREAS COVERED BY PORTABLE LADDER REQUIREMENTS

The OHS regulations in all jurisdictions have requirements for portable ladders. These requirements may apply to portable ladders in general or to specific types of ladders, such as step or extension ladders. (See the chart on page 4 for the general portable ladder requirements in each province and territory.) But although there are some differences, these requirements are generally very similar and typically cover the following key areas:

1. Construction of Ladder

The OHS regulations generally include requirements for how ladders must be constructed to ensure that they're safe for workers to use. Those requirements typically vary depending on what the ladder is made of (such as wood v. metal) and whether the ladder is:

Commercially manufactured. In most cases, workers use ladders made by ladder manufacturers and purchased by the employer for use in the workplace. The OHS regulations typically require commercially made ladders to comply with various voluntary standards, such as:

- CSA Standard CAN3-Z11-M81, Portable Ladders;
- ANSI Standard A14.1-2007, American National Standard for Ladders—Wood—Safety Requirements;
- ANSI Standard A14.2-2007, American National Standard for Ladders—Portable Metal—Safety Requirements; or
- ANSI Standard A14.5-2007, American National Standard for Ladders—Portable Reinforced Plastic—Safety Requirements.

Insider Says: You can get free access to CSA standards such as the above that have been incorporated into the OHS laws at http://ohsviewaccess.csa.ca/.

Made on site. In some workplaces—most notably construction sites—workers may build their own ladders. The OHS regulations usually have very detailed requirements for how ladders made on site are constructed. For example, they may specify the grade and types of wood that may be used, such as spruce or fir, and require that lumber to be free of knot holes or other defects. These construction requirements usually cover the dimensions of and other details for:

- Side rails;
- Centre structural rails;
- Rungs;
- Cleats;
- Length of ladder; and
- For extension ladders, overlap.

In addition, you generally can't paint wooden portable ladders, except

14 DOS & DON'TS OF SAFE PORTABLE LADDER USE

When using portable ladders, workers SHOULD:

- 1. Try to maintain three points of contact with the ladder at all times.
- 2. Carry tools in a tool belt or raise and lower them with a hand line.
- 3. Ensure that their shoes/boots are clean and have slip-free soles.
- 4. Face the ladder and stand in the centre of the side rails.
- 5. Secure the ladder from moving or have a coworker hold it.
- 6. Ensure the legs of a step ladder are fully extended and locked in place.
- 7. Make sure they and their materials don't exceed the ladder's load limit.

But workers SHOULD NOT:

- 1. Work from either of the top two rungs, steps or cleats or the bucket/pail shelf of a portable ladder unless the manufacturer's specifications allow the worker to do so.
- 2. Carry heavy or bulky objects or any other object that may make going up or down the ladder unsafe.
- 3. Splice or lash ladders together to extend their length.
- 4. Place ladders in front of or against a door unless the door is blocked in the open position, locked or otherwise guarded.
- 5. Use a ladder as scaffold flooring, support for scaffold flooring or a horizontal walkway.
- 6. Place a ladder on a box, barrel or other unstable base.
- 7. Move a ladder while someone is on it.

to cover them in a transparent protective coating that won't conceal any defects.

2. Ladder Maintenance & Inspections

Ensuring that ladders are properly constructed is the first step in protecting workers while using them. But if you don't maintain ladders, they can create safety hazards and endanger workers. So the OHS regulations often include maintenance requirements. For example, ladders should be clean and free of grease, oil or other slippery substances that could cause a worker to fall off of them.

And to ensure that portable ladders stay safe for

workers to use, some jurisdictions require ladders to be inspected, either by a worker or a "competent person," for any defects or problems, such as loose, broken or missing rungs or split side rails, *before* they're used. If a ladder inspection reveals any defects, you should remove it from service.

Insider Says: For more information on who qualifies as a "competent person," see "Compliance 101: What Makes a Worker a 'Competent Person' under OHS Laws?" Sept. 2008, p. 11.

INSPECTION FORM: Go to the *Insider*'s online partner site, www.OHSInsider.com, to download a form that workers can use to inspect ladders before using them.

3. Positioning of Ladder

A key element of safe ladder use is the proper positioning of ladders, particularly extension ladders. So it's no surprise that the OHS regulations often specify exactly how ladders must be positioned, especially when they're not fastened in place.

For example, a ladder should be placed on a base that's firm, level and stable. And metal ladders shouldn't be used in areas where there's a risk that they could come into contact with live electrical wires or equipment. In addition, when a ladder is leaned against a wall or other structure, the rule of thumb is to maintain a 1:4 ratio. That is, the base of the ladder must be no further from the base of the wall or structure than one-quarter of the ladder's length. Put another way, place the base of the ladder one foot away from the wall or structure it's leaning against for every four feet of height to the point where the ladder touches the wall or structure at the top.

4. General Safe Use of Ladders

In general, the OHS regulations explain how portable ladders should be used and exactly what workers can—and can't—do on them. For example, ladders should be used in accordance with the manufacturer's instructions. See the box on the left for 14 dos and don'ts of safe portable ladder use.

Insider Says: For videos, safety talks and other training tools to ensure workers use portable ladders properly, go to SafetySmart's Ladder Safety section. Not a Safety Smart member? Sign up for a free 14-day trial

5. Use of Fall Protection

Some OHS regulations require workers using portable ladders to wear fall protection if they could fall a certain distance. For example, the federal OHS regulations

require employers to provide a fall-protection system to any person who works from a ladder at a height of more than 2.4 m above the nearest permanent safe level if, because of the nature of the work, that person is unable to use at least one hand to hold onto the ladder. But the regulations generally permit workers to work from a ladder without fall protection if:

- The work is a light duty task of short duration, such as touch-up painting or inspecting a gutter;
- The worker's centre of gravity is maintained between the ladder's side rails;
- The worker is generally able to maintain threepoint contact (such as two feet and one hand) with the ladder; and

 The ladder isn't positioned near an edge or floor opening that would significantly increase the potential fall distance.

BOTTOM LINE

Portable ladders are so ubiquitous and easy to use that employers and workers may simply take them for granted. And ladders can enable workers to safely access areas to which they couldn't otherwise get. But if ladders aren't properly constructed, maintained or used, they could instead put workers at risk. So it's critical that you ensure that all portable ladders in your workplace comply with the OHS regulations.

KNOW THE LAWS OF YOUR PROVINCE

General Portable Ladder Requirements

		RELEVANT LAWS
FED	1) Commercially manufactured portable ladders must meet the standards set out in CSA Standard CAN3-Z11-M81, Portable Ladders [Sec.3.11(1)]. 2) Subject to the below, every portable ladder must, while being used: a) be placed on a firm footing; and b) be secured in such a manner that it can't be dislodged accidentally from its position [Sec. 3.11(2)]. 3) Where, because of the nature of the location or of the work being done, a portable ladder can't be securely fastened in place, it must, while being used, be sloped so that the base of the ladder is no less than one-quarter and no more than one-third of the length of the ladder from a point directly below the top of the ladder and at the same level as the base [Sec. 3.11(3)]. 4) Every portable ladder that provides access from one level to another must extend at least three rungs above the higher level [Sec. 3.11(4)]. 5) Metal or wire-bound portable ladders must not be used where there's a hazard that they may come into contact with any live electrical circuit or equipment [Sec. 3.11(5)]. 6) No worker may work from any of the three top rungs of any single or extension portable ladder or from either of the two top steps of any portable step ladder [Sec. 3.11(6)].	Canada OHS Regs
AB	1) A worker must not perform work from either of the top two rungs, steps or cleats of a portable ladder unless the manufacturer's specifications allow the worker to do so [Sec. 133(1)]. 2) Despite the above, a worker may work from either of the top two rungs, steps or treads of a stepladder if: a) the stepladder has a railed platform at the top; or b) the manufacturer's specifications for the stepladder permit it [Sec. 133(2)]. 3) Sec. 134(1) spells out the construction requirements for portable ladders built on site. 4) Sec. 134(2) contains the construction requirements for two way constructed portable ladders built on site. 5) An employer must ensure that a portable ladder manufactured on or after July1, 2009 meets the requirements of: a) CSA Standard CAN3 Z11 M81 (R2005), Portable Ladders; b) ANSI Standard A14.1 2007, American National Standard for Ladders — Wood — Safety Requirements; c) ANSI Standard A14.2 2007, American National Standard for Ladders — Portable Metal — Safety Requirements; or d) ANSI Standard A14.5 2007, American National Standard for Ladders — Portable Reinforced Plastic — Safety Requirements [Sec. 135]. 6) A worker must ensure that: a) a portable ladder is secured against movement and placed on a base that's stable; b) the base of an inclined portable ladder is no further from the base of the wall or structure than one quarter of the distance between the base of the ladder and the place where the ladder contacts the wall; and	OHS Code 2009

		RELEVANT LAWS
AB	c) the side rails of a portable ladder extend at least 1 m above a platform, landing or parapet if the ladder is used as a means of access to the platform, landing or parapet [Sec. 136].	OHS Code 2009
BC	 A manufactured portable ladder must be marked for the grade of material used to construct the ladder and the use for which the ladder is constructed [Sec. 13.4]. A ladder must: a) be placed on a firm and level base; b) be positioned so that the horizontal distance from the base to vertical plane of support is approximately 1/4 of the ladder length; c) have sufficient length to project approximately 1 m (3 ft) above the upper landing to which it provides access; and d) if necessary, be secured to ensure stability during use [Sec. 13.5]. If work can't be done from a ladder without hazard to a worker, a work platform must be provided. [Sec. 13.6(1)]. A worker may not carry up or down a ladder, heavy or bulky objects or any other objects which may make ascent or descent unsafe [Sec. 13.6(2)]. 	OHS Reg.
ON	Industrial Establishments Reg: 1) A portable ladder must: a) be free from broken or loose members or other faults; b) have non-slip feet; c) be placed on a firm footing; d) where it exceeds six metres in length and isn't securely fastened, or is likely to be endangered by traffic, be held in place by one or more workers while being used; and e) when not securely fastened, be inclined so that the horizontal distance from the top support to the foot of the ladder is no less than 1/4 and no more than 1/3 of the length of the ladder [Sec. 73]. Construction Projects Reg: 1) A ladder must be designed, constructed and maintained so as not to endanger a worker and be capable of withstanding all loads to which it may be subjected [Sec. 78(1)]. 2) A ladder must: a) be free from defective or loose rungs; b) have rungs spaced at 300 mm on centres; c) have side rails at least 300 mm apart; d) be placed on a firm footing; and e) be situated so that its base isn't less than one-quarter and no more than one-third, of the length of the ladder from a point directly below the top of the ladder and at the same level as the base of the ladder, if the ladder isn't securely fastened [Sec. 78(2)]. 3) Sec. 78(3) spells out the maximum length of various kinds of portable ladders. 4) No ladder may be lashed to another ladder to increase its length [Sec. 78(4)]. 5) A ladder used as a regular means of access between levels of a structure must: a) extend at the upper level at least 900 mm above the landing or floor; b) have a clear space of at least 150 mm behind every rung; c) be located so that an adequate landing surface that's clear of obstructions is available at the top and bottom of the ladder; and d) be secured at the top and bottom to prevent movement [Sec. 80]. 6) Sec. 81 spells out the construction requirements for double-width wooden ladders. 7) Sec. 82 contains the construction requirements for double-width wooden ladders. 8) When a step-ladder is being used as a self-supporting unit, its legs must be fully-spread and its spr	

Go to OHS Insider for a complete chart of the requirements in all Provinces and Territories.

SPOT THE SAFETY VIOLATION: ILLUSTRATIVE TRAINING TOOLS ON OHS INSIDER

Do you think you can look at a picture of a worksite or worker and spot any safety violations being committed? Test your ability to recognize safety hazards and violations with Spot the Safety Violation pieces, which are conveniently located on one page on OHSInsider.com.

A **Spot the Safety Violation** features a picture containing at least one safety violation or hazard. We ask you what's wrong

and you click through for the answer. But we also tell you what the workers should be doing, such as wearing fall protection. And we briefly explain the requirements in the OHS laws on that area and give you tips and advice on how to ensure you comply with such requirements in your workplace. Plus, we provide links to other related resources, such as model tools, compliance centres, safety talks and safety posters.

Send us a picture of a safety violation and if we use it on OHS Insider, we'll send you a \$100 Safety Poster credit. Email images to spotthesafetyviolation@bongarde.com.

RECENT SPOT THE SAFETY VIOLATIONS ON OHS INSIDER

- Try Getting out This Emergency Exit
- Moving Material v. Moving People
- Time for a Cat Nap?
- Winter Driving Safety
- Cleanliness Is Next to Godliness
- Snow + Ramp = Slipping Hazard
- Creativity Can Be Dangerous
- Watch Where You Step
- Power Tools Aren't Lapdogs
- Proper Coughing Etiquette





DOS & DON'TS

Clear Snow & Ice From Company Property

n the winter, it's important that you clear the snow and ice from company walkways, sidewalks, parking lots, etc. or treat it with sand or de-icer. Snow and ice pose a slip-and-fall hazard to your workers. So like any other safety hazard, under the OHS laws, you must take reasonable steps to protect workers from slippery surfaces.

But workers aren't the only ones endangered by snowy or icy surfaces—and the OHS laws aren't the only laws with which you have to comply. Visitors to your property could also slip and fall on icy walkways. And under so-called "occupiers' liability" laws, you could be liable for their injuries, especially if you were aware of the danger.

Look at what happened in a case from Saskatchewan. A man was walking down a public sidewalk on his way to a credit union. When he was within a few feet of the credit union's building, he slipped on a large patch of ice and broke his leg. He sued the credit union for his injuries under the province's occupiers' liability law.

The court ruled that the credit union was liable

for the man's broken leg. It explained that, as an occupier of property, the credit union had a duty to use reasonable care to protect visitors from unusual dangers on the property. A downspout at the back of the credit union's building drained water across the sidewalk, which then froze to create ice. And there was evidence that the credit union knew what was happening and that people had slipped on the ice. Thus, the credit union created a "substantial hazard" on the sidewalk and so was liable for the man's injuries, ruled the court, ordering the credit union to pay him over \$17,000 in damages [Olausen v. Gravelbourg Credit Union Ltd., [1996] S.J. No. 845, Dec. 20, 1996].

Insider Says: For more information on protecting visitors to your workplace, see "How to Create a Visitor Safety Policy," April 2005, p. 1. And here are some tips to protect your workers from having a heart attack while shoveling snow. Also, at SafetySmart. com, you can get a safety talk on avoiding slips and falls in the winter. Not a subscriber to Safety Smart? Sign up for a free trial.

TEST YOUR I.Q.

Can Employer Fire HIV+ Worker for Safety Concerns?

SITUATION -

A senior worker at a cleaning company who has an excellent employment record is diagnosed with HIV but doesn't tell his employer. While he's on medical leave for an unrelated illness, a co-worker inadvertently reveals his HIV status to a manager. When the worker fully recovers, he calls his manager to say he's ready to return to work fulltime and resume all of his usual duties. The manager tells the worker he's being terminated because there's no work for him. The worker hears through former co-workers, however, that the company recently got a major contract and hired extra workers. So he files a disability discrimination complaint. The company admits that it terminated the worker after learning of his HIV status, but only because it feared the worker's medical condition was a safety hazard to co-workers and clients, although it couldn't explain exactly how his status threatened others. It also claims there were no current work assignments that would be suitable for an HIV-infected worker.

QUESTION

Did the employer commit disability discrimination?

- A. Yes, because it terminated the worker based on his HIV status.
- B. Yes, because it failed to accommodate the worker to the point of undue hardship.
- C. No, because the worker wasn't disabled.
- D. No, because it fired the worker based on its safety concerns.

ANSWER

A. The employer committed disability discrimination because the worker's HIV status was a factor in the termination.

THE EXPLANATION

A discrimination claim requires the worker to have a physical or mental disability and be adversely treated in his employment, with the disability a factor in that treatment. The disability doesn't have to be the *only* factor; it just needs to be one factor in the employer's treatment of the worker.

This hypothetical is based on an actual discrimination complaint filed before the BC Human Rights Tribunal. In that case, the tribunal found that there was discrimination because the employer admitted that the worker's HIV status was a factor in its decision to fire him. In addition, the claim that there were no job assignments for this competent worker was undercut by the fact the company had just gotten a big contract and actually hired more workers. Thus, because the worker's disability, that is, his HIV status, was a factor in the termination, the employer was guilty of disability discrimination.

WHY WRONG ANSWERS ARE WRONG

B is wrong because accommodating the worker's disability isn't an issue here. Yes, employers have a duty to accommodate disabled workers to the point of undue hardship. But this duty only kicks in when the worker *needs*

an accommodation. There's no evidence in these facts that this worker needed any accommodation. Although he'd taken medical leave, when he recovered, he asked to return to his former job responsibilities fulltime. There's no indication that the worker couldn't do his job without accommodation or that he requested any accommodation.

C is wrong because being HIV+ is considered a disability. Canadian courts and human rights commissions have held that having an HIV infection is a disability protected by human rights laws. (See, the Canadian Human Rights Commission policy concerning HIV and AIDS.) Thus, the worker in this situation did have a disability, even if he didn't have active symptoms of a disease or illness that affected his work abilities. In fact, HIV is often referred to as an "episodic disability" because periods of good health may be interrupted by periods of illness and it's often difficult to predict when these episodes of illness will occur or how long they'll last. Note that an employer can be liable for discrimination even when a worker doesn't actually have a disability but it merely perceives the worker to be disabled. (For more information on perceived disabilities, see "Is it Discrimination to Treat a Worker Adversely Because of His Weight?"June 2012, p. 6.)

D is wrong because there's no evidence that the worker's HIV status created any safety issues in his work as a cleaner. Moreover, even if the employer had a legitimate safety concern as to the worker's HIV status, it still wouldn't be permitted to just fire the worker. The employer would have to determine whether there were any steps it could take short of termination to eliminate the hazard, such as requiring the worker to immediately bandage all cuts to prevent others from coming into contact with his blood. (For more information on managing HIV+ workers, see HIV in the Workplace: A Guide for Employers from the Canadian Public Health Association.)

SHOW YOUR LAWYER

Malin v. Ultra Care, [2012] BCHRT 158 (CanLII), May 9, 2012



OHS MONTH IN REVIEW

A roundup of important new legislation, regulations, government announcements, court cases and board rulings

LAW OF THE MONTH

Important Changes to Alberta's OHS Act Take Effect

Ontario isn't the only jurisdiction that's made big changes to its OHS law recently. For example, <u>Saskatchewan's significant changes to its OHS law</u> took effect Nov. 7, 2012. And in Alberta, Bill 6, the <u>Protection and Compliance Statutes Amendment Act, 2012, received Royal Assent on Dec. 10, 2012. Most of the major changes Bill 6 makes to the OHS Act took effect on that date except those related to administrative penalties, which come into force upon proclamation. Here's a look at the key changes and what they mean for employers in Alberta.</u>

THE LAW

Bill 6 amends several different laws, including the *OHS Act*. It changes this safety law in <u>six key areas:</u>

Administrative penalties. The Department can now impose administrative penalties for OHS violations, with a maximum administrative penalty of \$10,000 per violation per day. Administrative penalties may apply to an employer, worker, contractor, prime contractor or supplier. They're seen as a middle ground compliance tool between issuing an order and prosecuting in court. (The administrative penalty changes haven't taken effect yet and some details will need to be fleshed out in the regulations.)

OHS officers. OHS officers have the authority to ask people at a work site to identify themselves. In addition, employers are required to identify their workers to the officers on request. Anyone who interferes with an officer exercising his or her power under the Act is liable for an offence. It's hoped that this change will help officers enforce compliance with OHS laws and the required health and safety rules of the workplace.

Prime contractors. Bill 6 clarifies the prime contractor requirement by explaining that a prime contractor is required at a work site whenever there are two or more employers whose activities have a health and safety impact on each other or are interrelated. Note that the two employers and their workers don't have to be working at the site at the same time to trigger the requirement. This change was made to prevent avoidance of the prime contractor requirements through the skillful scheduling of work.

OHS Council. Bill 6 gives the OHS Council the new duty of hearing administrative penalty appeals in addition to its current duties of hearing appeals to OHS orders, permit suspensions and cancellations, and safety-related disciplinary action complaints.

Creative sentences. Any outstanding amount of a creative sentence owing to a third party, such as a school or safety organization, as ordered by the court to be paid by a person under the *OHS Act* is now deemed to be a fine imposed on that person. Thus, the government can enforce payment of such fines under the *Provincial Offences Procedure Act.* (Creative sentences are a popular tool in Alberta. Here's a look at when creative sentences are and aren't appropriate for safety offences.)

Orders. Besides permitting personal service of OHS orders, Bill 6 now allows service of such orders by electronic methods, such as fax and email, in accordance with the regulation. And service on a person in apparent authority is now acceptable service on an employer. The change was necessary to update the prior service provisions, which created an administrative burden.

ANALYSIS

Why was Bill 6 enacted? Because as the Minister of the Environment said when he introduced the bill, "The great majority of employers and businesses in Alberta willingly and carefully comply with the rules that are in place, which govern their activities. However, there are some who repeatedly and chronically choose not to do so. The provisions of this act are aimed directly at them."

To learn more about Bill 6, register for our March 20, 2013 webinar in which Alberta OHS lawyer David Myrol will walk you through these changes to the OHS Act in detail and discuss their implications for Alberta workplaces. (Attendance for OHS Insider Pro Members is free but you do need to register.)



FEDER/

LAWS & ANNOUNCEMENTS

Dec. 12: Work Refusal over Name Tags Slows Border Crossings

Several Canada Border Services Agency officers at two bridge border crossings in Ontario disrupted crossings by refusing to wear name tags on their uniforms for safety reasons. The Customs and Immigration union "vehemently opposes" the new policy, claiming wearing name tags exposes members to "unnecessary risks." The CBSA says the name tag policy is in line with similar policies in the Canadian Forces, Correctional Service Canada and US Customs and Border Protection.

CASES

OK to Fire Postal Worker for Insubordination & Refusing Training

A postal worker was fired for refusing to go to training and calling a supervisor a "f**king liar" on the work floor. The union filed a grievance. The arbitrator said the training method the supervisor directed the worker to participate in was consistent with standard practice at the depot and within the employer's operations. And the union had never complained about this practice before. The arbitrator also flatly rejected the worker's claim that she was concerned about safety due to her mental state. Lastly, her language to the supervisor was serious misconduct consisting of "insubordination and profane insolence." Given that she'd previously gotten a five-day suspension for insubordination, termination was justified here,

concluded the arbitrator [Canada Post Corp. v. Canadian Union of Postal Workers (Torpy Grievance), [2012] C.L.A.D. No. 380, Dec. 14, 2012].

Court Won't Order Minister of Labour to Prosecute Labour Code Violations

A union asked the court to order the Minister of Labour to prosecute Air Canada for allegedly violating the *Canada Labour Code* by, among other things, choosing someone to be the "competent person" to investigate workplace violence who the union didn't consider impartial. But the court refused, ruling that the law doesn't permit a court to order the government to prosecute Code violations as such decisions are subject to prosecutorial discretion [*CUPE, Air Canada Component v. Canada (Minister of Labour)*, [2012] FC 1484 (CanLII), Dec. 17, 2012].

Truck Driver Wasn't Constructively Dismissed over Safety Concerns

A transportation company got a big contract with a new client and assigned five truck drivers solely to this account. One driver was concerned about his safety on this new assignment because the client was a union shop and so he'd have to deal with Teamsters who'd been reassigned due to the contract. After thinking about the situation, the driver showed up at work, said he was quitting and left. He then filed a grievance claiming he'd been constructively dismissed. The arbitrator disagreed. The driver didn't tell his employer he couldn't do the assignment due to safety concerns—he just quit. And there was no evidence that his fears were justified or that he'd have been fired if he refused the assignment, added the arbitrator [McCarthy v. Travelers Transportation Services Inc., [2012] C.L.A.D. No. 396, Dec. 12, 2012].



LAWS & ANNOUNCEMENTS

Jan. 1: New Workers' Comp Policy on TV & Movie Productions

The WorkSafeBC Board approved a new policy on extended coverage for motion picture or TV productions. As of Jan. 1, 2013, a movie or TV production firm may apply to WorkSafeBC to have all individuals hired to provide services on such a production, who aren't otherwise entitled to get workers' comp benefits, declared its employees. The policy applies to all applications for extended coverage for motion picture or TV productions made on or after Jan. 1, 2013.

Jan. 11: Two Workplace Fatalities Within a Few Days

On Jan. 5, a worker died after being involved in a compact excavator incident on private property. And on Jan. 10, a 27-year-old worker was assisting a forklift operator in transporting construction materials when there was an incident and he was killed. The BC Coroners Service and WorkSafeBC are investigating both incidents.

CASES

Company's Collection & Use of GPS Information Didn't Violate Privacy Laws

Mechanics for an elevator company don't report to an office; they travel from their homes to

jobsites using company vehicles. The company collected information from a GPS and engine status data system installed in its vehicles, including vehicles' locations and movements, engine start and stop times and excessive speeding, braking and acceleration. Workers complained that the company was violating privacy laws. But the Information and Privacy Commissioner upheld the company's GPS policy. Among other things, the information collected helped the company take a pro-active approach to safe driving, letting it address unsafe driving practices. In addition, the system helped the company locate a missing mechanic and investigate a fatality [Order F12-O1, Schindler Elevator Corp. (Re), [2012] B.C.I.P.C.D. No. 25, Dec. 19, 2012].

Employer Tried to Accommodate Worker with Broken Hip

A worker at a manufacturing plant broke his hip on the job. While he was out, his prior position was eliminated. The employer offered him another job that met his medical restrictions. But the worker rejected that position and the proposed gradual return-to-work plan, claiming that the employer failed to accommodate him to the point of undue hardship. The Human Rights Tribunal dismissed his claim. The employer tried to accommodate the worker with a position that met his physical restrictions but he didn't fully participate in that process. And there was no evidence to support his claim that the employer assigned him to a demeaning position in the hopes that he'd quit [Chamberlain v. McAllister Industries, [2012] BCHRT 430 (CanLII), Dec. 14, 2012].



LAWS & ANNOUNCEMENTS

Jan. 8: No OHS Charges in Coker Explosion

In Jan. 2011, an explosion in the coker at a northern Alberta energy site injured five workers and sent flames and smoke more than 100 metres into the air. Alberta Occupational Health and Safety investigated the incident but officials recently announced that they won't be filing OHS charges as there's no likelihood of a conviction.

Dec. 21: PTSD in First Responders Presumed to Be Work-Related

PTSD in first responders is now presumed to be work-related, unless proven otherwise, and thus covered by workers' comp. Related resources on the new policy:

- Worker PTSD fact sheet
- Employer PTSD fact sheet
- Service provider PTSD fact sheet
- Bill 1 Workers' Compensation Amendment Act, 2012
- Bill 1 Notice of Amendment.

CASES

Court Agrees to Hear Appeal in Calf-Roping Machine Conviction

During a Stampede party, a tech company's worker was killed while operating a calf roping machine. The company was charged with violating the OHS laws and acquitted at trial. But on

appeal, the verdict was overturned. The appeals court ruled that the trial judge's rulings were unreasonable, finding that the company didn't exercise due diligence. The company asked the Alberta Court of Appeal to hear the case and it agreed to do so. One of the issues to be addressed is the proper interpretation and application of the concepts of "risk" versus "hazard" and how they relate to foreseeability [*R. v. XI Technologies Inc.*, [2012] ABCA 368 (CanLII), Nov. 30, 2012].

Mental Stress from Multiple Traumatic Events at Work Was Compensable

A transportation worker filed a workers' comp claim for mental stress due to exposure to a number of fatalities, serious and minor injuries and near misses. The claim was rejected on the grounds that his condition wasn't work-related. On appeal, the Commission found that in the course of the worker's employment, he was exposed to several events that were traumatic as defined by workers' comp law and policy. As a result, he developed a drinking problem, depression, anxiety and PTSD. Thus, his psychiatric and psychological diagnoses were causally related to the traumatic exposures at work and so they were compensable [*Decision No: 2012-0995*, [2012] CanLII 79463 (AB WCAC), Dec. 10, 2012].

Release of PCB-Contaminated Oil Costs City \$50,000

About 160 litres of PCB-contaminated oil was released from a metal drum located at a city electrical substation. The city pleaded guilty to one violation of CEPA. The court fined it \$50,000 and ordered it to create policies to ensure proper PCB management, create and implement a training program for workers who handle PCBs, implement internal auditing to prevent future incidents and publish an article in a local newspaper about the incident [*City of Red Deer*, Govt. News Release, Jan. 14, 2013].



LAWS & ANNOUNCEMENTS

Feb. 1: New Hearing Loss Policy Took Effect

As of Feb. 1, 2013, the WCB has a new, non-retroactive policy on how work-related hearing-loss is determined. Medical Officers will apply current best occupational medical knowledge when reviewing a claimant's history and audiogram to see if the hearing loss is compatible with a work related, noise-induced injury. Workers in high noise industries should have audiograms

done during employment and again at or within five years of retirement. (Learn how to implement a hearing conservation program in your workplace.)

Jan. 3: Maximum Accessible Earnings for 2013

The maximum assessable earnings for 2013 is \$55,000 per covered worker. Minimum optional personal coverage is \$20,800, while the minimum positional personal coverage \$31,723.



LAWS & ANNOUNCEMENTS

Feb. 1: New Flagger Requirements Take Effect

Changes to the Workplace Safety and Health Regulation regarding "flagperson" requirements took effect on Feb. 1, 2013. The changes cover the definition of "flagperson," training requirements for flagpersons, PPE and use of warning signs. It also specifically bars flagpersons from using personal electronic devices, such as cell phones and MP3 players. (For more information on electronic devices in the workplace, see the Cell Phones & Other Electronic Devices Compliance Centre.)

CASES

Employer Fined \$72,050 after Worker Is Crushed to Death by Bale of Paper

A bale of recycled paper fell on a worker while he was unloading a trailer, killing him. His employer pleaded guilty to failing to provide its workers necessary information, instruction or training on the hazards of unloading bales of paper from trailers and was fined \$72,050 [Western Scrap Metals Inc., Govt. News Release, Dec. 11, 2012].

Violating Respiratory Protection Order Costs Company

A furniture manufacturer was fined \$2,500 for failing to comply with an Improvement Order issued on Jan. 8, 2012 that required it to ensure workers were provided with and were properly wearing respiratory protective equipment appropriate to the hazards present [Woodsmith Solid Wood Furniture Manufacturing, Govt. News Release, Nov. 27, 2012].



LAWS & ANNOUNCEMENTS

Dec. 17: Poor Refueller Training Caused Helicopter Crash

In March 2011, a helicopter crashed, sending two passengers to the hospital. The TSB investigation concluded that the chopper had been refuelled with Jet A-1 fuel instead of AVGAS 100LL. The responsible worker had only worked at the fuel station for about four months and had never refuelled a helicopter with AVGAS. The TSB report noted that the company's training didn't mention that some helicopters use such fuel. Although Transport Canada doesn't set standards for refueller training programs, the TSB said the worker would have "greatly

benefitted from a more detailed training program" and having aircraft reference material on hand would have helped prevent such incidents.

Dec. 11: Statistical Profiles of OHS Injuries & Diseases Released

The IRSST released statistical profiles of:

- Occupational injuries and sectors at risk in Québec
- Workers getting workers' comp for workplace injuries
- Occupational diseases.



LAWS & ANNOUNCEMENTS

Jan. 1, 2013: New Protections for Emergency Workers on Roads Took Effect

As of Jan 1, 2013, drivers are required to slow down and proceed with caution when approaching a stopped emergency vehicle with a flashing red light. And if there are two or more lanes of traffic, in addition to slowing down and proceeding with caution, drivers must move over into another lane if it can be done safely. Changes were made to the Motor Vehicle Act to help ensure that the drivers don't hit an authorized emergency vehicle or endanger anyone outside that vehicle.

Dec. 10: Third Quarter Results Released

According to the third quarter results, at the end of Sept. 2012, the province's accident frequency rate was 2.99 accidents per 100 FTE, below the 2012 target of 3.28. And year-to-date, safety officers had conducted 6.417 inspections and issued 5.282 orders.

Dec. 31: Benefits Calendars Released

WorkSafeNB released calendars on the payment of:

- Pension/survivor benefits
- Long-term disability benefits.

Dec. 18: Worker Dies after Blow to the Head by Floor Guard

At a bottling facility, two workers, both employees of an outside contractor, were removing a floor guard used to protect storage racks. One worker was using an industrial lift truck to pry up the guard with the forks. When the screws holding the guard let go, the guard struck the other worker in the head, killing him. WorkSafeNB is investigating the incident.

CASES

Employer Fined \$5,000 after Worker Falls & Breaks Back

A worker fell more than 10 feet to the floor and sustained an L2 lumbar fracture and sacrum fracture. His employer pleaded guilty to failing to ensure that adequate precautions were taken to ensure worker safety and leaving an area unguarded when a guardrail was removed to conduct work. It was fined \$5,000 [AV Nackawic Inc., Got. News Release, Dec. 21, 2012].



CASES

Largest Fine in Province's History Imposed on Mine for Worker's Death

A mine worker died after falling almost seven metres when the scaffolding he was working on collapsed. Another worker was seriously injured. The mining company pleaded guilty to three violations of the *OHS Act*. The government asked for a \$500,000 fine. But the court fined the mine \$350,000, which was still the largest fine ever imposed in a safety case in the province [*The Iron Ore Company of Canada*, Dec. 31, 2012].

Worker & Company Convicted and Fined for Unsafe Operation of Equipment

An excavation company's worker operated an excavator in an unsafe manner while removing asphalt from a parking lot that was being repaved. No one was injured. The company was charged with three OHS violations for failing to: protect those not in its employ, ensure that there was protection from flying fragments and ensure that a worker wasn't within range of the swinging movement of mobile equipment. The court convicted if of two of the three

charges and fined it \$6,000. The worker, who had both operator and supervisory duties, was also convicted of two safety offences and fined \$2,000 [Farrell's Excavating Ltd., Govt. News Release, Dec. 18, 2012].

MARCH 20TH WEBINAR RECENT CHANGES TO

Join Dave Myrol as he walks you through these important OHS changes to Alberta's OHS Act.

ALBERTA'S OHS ACT



LAWS & ANNOUNCEMENTS

Jan. 11: Three Winter Inspection Blitzes Planned

The MOL will conduct three inspection blitzes at workplaces across the province this winter. Inspectors will visit:

- Jan. and Feb.: Underground mines to check on diesel emissions and other hazards that could affect air quality
- Feb. and March: Industrial and construction workplaces to check for slips, trips and falls hazards; healthcare workplaces to check on workplace violence and harassment.

Jan. 1. 2013: Changes to OELs Took Effect

The MOL revised the occupational exposure limits (OELs) in Reg. 833 and Reg. 490/09 through 0. Reg. 149/12 and 0. Reg. 148/12. These changes took effect on Jan. 1, 2013.

Dec. 19: Two Safety Task Forces Announced

CPO George Gritziotis named the members of two task forces that will consult and provide advice on vulnerable workers and safety in small businesses. Creation of the task forces was recommended in the Dean Report. Each group has 12 members, six worker and six employer representatives. They're expected to study the issues, gather information and report back over a period of no more than 30 months.

Dec. 19: New Workers' Comp Online Statistics Tool

The WSIB launched a new online statistics report, By the Numbers: 2011 WSIB Statistical Report, that makes workers' comp statistics more accessible and easier to interpret. As well as demographic information, it includes analysis of historical trends; profiles of Ontario workers, employers, claims and benefit payments; enlargeable maps and graphics; and downloadable tables.

Dec. 7: Results of Crane Inspection Blitz Released

Between July 1 and Aug. 31, 2012, MOL inspectors conducted a <u>blitz of hazards involving tower cranes, mobile cranes and concrete pumping equipment</u> at construction sites. During this blitz, inspectors visited 527 construction projects and issued 1,481 orders, including 149 stop work orders. Other orders related to PPE, contractors' duties, general maintenance and crane-specific issues.

Jan. 1: New Benefit Rates in Effect

As of Jan.1, 2013, increased workers' comp benefit rates took effect. The independent living allowance increased to \$3,800.41 a year. The minimum burial expenses allowance also increased to \$2,870.14. And the hourly personal care allowance rates increased.

CASES

Proper Supervision Doesn't Require the Continual Presence of a Supervisor

A young worker at a car wash drove a vehicle into a bay, causing a chain of collisions that injured a co-worker. The worker had been told twice by a manager not to drive any vehicles, just clean them. At the time of the incident, there were no supervisors on hand. The car wash was convicted of two OHS violations, including failing to provide proper supervision. The trial court said the worker should've been "contemporaneously supervised at all times." But the appeals court disagreed and overturned the convictions. The OHS law doesn't require a supervisor always to be present for every task a worker does, calling that "absurd." And because it wasn't the worker's job to drive and there was no reason for the car wash to foresee that he would do so, it didn't have to provide him with information, instruction or supervision on the safe operation of vehicles [R. v. 679052 Ontario Ltd. (c.o.b. Auction Reconditioning Centre), [2012] ONC1747 (CanLII), Nov. 30, 2012].

Employer's Safety Concerns about Worker's English Proficiency Were Reasonable

An employer asked a union for eight electricians. A manager interviewed one and determined that his English proficiency wasn't sufficient for him to work safely on the job. So it refused to hire him. The union filed a grievance. The arbitrator noted that the electrician had previously worked for the employer for four weeks. The manager had contacted the person who'd been responsible for him at the time but that person didn't really remember him. The arbitrator said the manager should've then spoken to the people who'd worked directly with the electrician at that time, but he didn't. However, the arbitrator refused to order the employer to hire the electrician and pay him damages. In addition, if the manager had spoken to those who'd worked with the electrician before, he'd have learned that the electrician was assigned to a worker who also spoke Mandarin, which is the language they used on the job. So although the employer's investigation into the electrician's English proficiency could've been more thorough, its safety concerns about him were ultimately reasonable [*Hydro One*

Inc., [2012] O.L.R.D. No. 4251, Nov. 22, 2012].

Striking Worker's Comment about Guns Warranted Discipline but Not Firing

While workers at a mine were on strike, a worker on the picket line made inappropriate comments to a female security guard, including that he "should have brought a gun." As a result, he was fired. The union filed a grievance. The arbitrator, noting that the incident occurred before Bill 168 took effect, ruled that the worker's inappropriate conduct didn't qualify as workplace violence. He was trying to be funny and although the security guard wasn't amused, she also didn't feel frightened or threatened. His conduct warranted discipline but not termination. Because the worker didn't fully take responsibility for his conduct or appreciate its gravity, the arbitrator imposed a 30-day suspension instead [Vale Canada Ltd. v. United Steelworkers of America, Local 6500, [2012] CanLII 81310 (ON LA), Dec. 12, 2012].

LRB: Can't Refuse Dangerous Work that's Inherent to the Workplace

Workers at a prison refused to work because they didn't believe officials took the threat of a "zip gun" in the jail seriously enough. An MOL inspector investigated and concluded that they didn't have a right to refuse because of a situation that was "a normal condition" of their employment in a prison. But the workers continued their refusal. The Labour Relations Board dismissed the complaint, noting that for particular classes of workers, such as police officers, firefighters and corrections officers, the right to refuse was limited because of the dangers inherent in those jobs. And the possibility of a home-made weapon in a prison was inherent in that workplace [Dowling v. Hamilton-Wentworth Detention Centre, [2012] CanLII 81181 (ON LRB), Dec. 13, 2012).

Illegal Reprisal Claim by Injured Worker Could Continue on One Claim

After a worker returned to work after suffering neck and back injuries, he claimed that he was subjected to 16 different incidents of reprisals. The Labour Relations Board ruled that 15 of the incidents didn't qualify as illegal reprisals. But it did find that the worker's claim that he was laid off for six days after he contacted the MOL about being assigned unsafe work—if proven—was an illegal reprisal. So it allowed the case to go forward on that incident alone [Davies v. Honda of Canada Mfg., [2012] CanLII 78331 (ON LRB), Dec. 3, 2012].

No Duty to Accommodate an Injured Worker Who Can't Work

After a city sanitation worker suffered an injury on the job, he claimed that the city delayed in providing him with accommodated work, provided unsuitable modified work, required him to attend a meeting against doctor's orders and then laid him off. The Human Rights Tribunal dismissed the complaints, ruling that there was no likelihood of their success. The Tribunal explained that it's impossible to accommodate someone in the workplace who's unable to work, such as this worker. In legal terms, "there is no duty to accommodate an employee who cannot work," said the Tribunal [Cooper v. Toronto (City), [2013] HRTO 9 (CanLII), Jan. 3, 2013].

Publisher Fined \$85,000 for Pinchpoint Incident

A worker at a newspaper publisher's printing center was assigned to clean the rollers on one of the press units. He activated the "crawl mode," which rotates the rollers at five revolutions a minute, and then cleaned the bottom roller with a rag after removing the finger guard. The rag got caught in the rollers. It and the worker's hand were pulled into the unguarded pinchpoint, resulting in hand injuries. The publisher pleaded guilty to failing to ensure that the rollers were stopped during cleaning and properly blocked to prevent movement. The court fined it \$85,000 [Toronto Star Newspapers Ltd., Govt. News Release, Dec. 21, 2012].

Roof Manufacturer Fined \$60,000 for Guarding Violation

At a roof manufacturer's facility, a worker was investigating a problem on one of the production lines for asphalt shingles. When he put a gloved hand on a sheet of asphalt that was being processed, it was pulled into a roller and exposed to a pot of tar. He suffered third degree burns. The manufacturer was fined \$60,000 after pleading guilty to failing to ensure that the line's rollers were equipped with a guard or other device to prevent access to the pinchpoint [JKO Industries Ltd., Govt. News Release, Jan. 11, 2013].

Failing to Properly Train Worker Costs Company \$55,000

A worker at a grain elevator operation was moving a railcar from one track to another using a specialized railroad vehicle. He got out of the vehicle, went to activate a rail switch and noticed that the vehicle was moving towards the switch. When he stepped onto the track to retrieve lumber to chock the vehicle's wheels, his foot got caught between the rail and a wheel and was crushed. The MOL found that the worker was never trained on any policies about stepping on tracks or between railcars and other vehicles. The company pleaded guilty to failing to provide adequate information, instruction and supervision on the safe operation of the railcar moving vehicle and was fined \$55,000 [London Agricultural Commodities Inc., Govt. News Release, Dec. 24, 2012].



LAWS & ANNOUNCEMENTS

Dec. 20: Draft Workplace Safety Strategy Released

The Department of Labour and Advanced Education and WCB developed a new strategy to make the province's workplaces safer. The <u>draft Workplace Safety Strategy</u> includes results of province-wide consultations with key stakeholders and is informed by research. The final strategy will be released in March.

CASES

Workers' Comp Claim for Stress Due to Workplace Fatality Rejected

A worker filed a workers' comp claim for mental stress he said was the result of exposure to a fatality in the workplace. But the Appeals Tribunal rejected the claim. The worker wasn't present when the fatality occurred. In addition, although he found his job stressful both before and after the workplace fatality, there was little, if any, evidence that his general stress levels increased after the tragedy. And because there was no evidence that he suffered an acute reaction to the fatality, his claim wasn't compensable, concluded the Tribunal [2012-697-AD (Re), [2012] CanLII 80890 (NS WCAT), Dec. 12, 2012].



LAWS & ANNOUNCEMENTS

Jan. 31: New First Aid Requirements Took Effect

As of Jan. 31, 2013, changes to the first aid requirements contained in Section 9 of the *OHS Regulations* took effect. The changes put additional measures in place to protect workers and employers and reflect various hazard levels. For highlights of the changes and a guide to defining low hazard work, see the OHS Act & Regulations section of the WCB's website.



LAWS & ANNOUNCEMENTS

Dec. 31: Thermal Conditions Code of Practice Took Effect

A new <u>Code of Practice</u> on thermal conditions—that is, cold and heat—took effect in NWT and NU on Dec. 31, 2012. It applies to all workplaces covered by the <u>Safety Act</u> and <u>General Safety Regulations</u> and relates to Secs. 4 and 5 of the <u>Safety Act</u>.



LAWS & ANNOUNCEMENTS

Jan. 1: New Maximum Wage Rate & Assessable Earnings

The new maximum wage rate/maximum assessable earnings for 2013 is \$82,105. The maximum wage rate is a ceiling used to calculate the maximum benefits injured workers can get for loss of earnings. Maximum assessable earnings sets the maximum level of earnings on which employers can be assessed. They're revised every year. In 2012, the maximum wage rate/assessable earnings was \$80.074



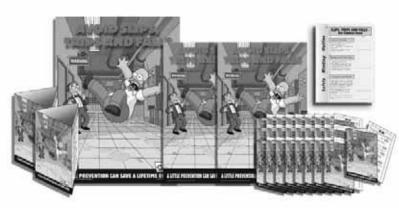
LAWS & ANNOUNCEMENTS

Jan. 7: Fatal Plane Crash under Investigation

A plane carrying seven passengers and two crew members crashed on the island of Sanikiluaq. The two pilots were seriously injured, six passengers sustained minor injuries and a six-month-old baby died. Initial reports from Transport Canada indicate that the plane overran the runway on its second attempt to land in blowing snow. The RCMP and the Transportation Safety Board are conducting their own investigations into the incident.

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- Five to 20 workers: A health and safety representative is required; and
- More than 20 workers: A JHSC is required.

There are exceptions, of course. For example, in Alberta, a workplace must establish a JHSC only if the government orders it to do so. In addition, there may be situations in which one JHSC can represent several workplaces, but that's uncommon.

Insider Says: It's not always easy to determine whether a company's operations constitute one or multiple workplaces and thus whether it needs a JHSC. Take this quiz to see if you can tell if a lumber company needs a JHSC.

Q: How Many Members Must Be on the JHSC?

A: The number of members a JHSC must have varies from jurisdiction to jurisdiction. But there are three basic approaches:

- Minimum number: A few jurisdictions set a minimum number of required members, ranging from two to four. Of course, a workplace can always have more members than the minimum if it so chooses;
- Range: Other jurisdictions set a range, specifying the minimum and maximum number of members, which gives workplaces some flexibility. The usual range is four to 12 members; and
- As agreed: Some jurisdictions let the workers and management decide for themselves how many members the JHSC should have.

Q: Who Do the Members of the JHSC Represent?

A: There are two kinds of JHSC members: worker representatives and management representatives. That's because under the Internal Responsibility System (IRS), both workers and management play a role in identifying and eliminating workplace hazards. Remember, the "J" in JHSC stands for "joint"—that is, the committee is intended to be a *joint* undertaking between management and workers.

Insider Says: For more on JHSC membership requirements, see "The Joint Health & Safety Committee: Are You in Compliance with Membership Requirements?" Aug. 2006, p. 1.

Once you know or decide how many total members the JHSC must have, you must ensure that the breakdown of worker v. management members complies with the law. The OHS laws generally require there to be at least as many worker representatives as management representatives on the JHSC. But some jurisdictions let workers have more representatives than management.

Q: Does the JHSC Have Leaders?

A: Most OHS laws require a JHSC to have two cochairpersons, one representing workers and the other representing management. The key duty of the cochairs is planning for and running the JHSC meetings. And some jurisdictions specify that they must take turns doing so. The co-chairpersons may also take on other duties, such as being the liaison between the JHSC and management.

Q: Must JHSC Members Get Special Training?

A: The answer to this question is complicated. The JHSC has a lot of responsibility. Its members are expected to help identify workplace hazards, develop incident prevention programs and policies, and address worker safety concerns. To perform these functions effectively, JHSC members may need and should get special training.

That being said, the OHS laws don't always require JHSC training. The jurisdictions take five approaches to this issue:

- Require all JHSC members to get training;
- Require JHSC leaders, such as co-chairpersons or "certified members" in Ontario, to get training;
- Require employers to allow all JHSC members to get training;
- Require employers to allow JHSC leaders to get training; and
- Recommend that JHSC members get training.

Bottom line: Having an ineffective JHSC may be worse than having no committee at all. So it's in your best interests to ensure that the JHSC members are adequately prepared to perform all of their functions. The best way to do so is to ensure they get trained on:

- The IRS and the role of the JHSC and its members within it;
- A "plain English" overview of the OHS laws and related regulations in your jurisdiction;
- Health and safety basics;
- WHMIS;
- The JHSC's roles and responsibilities under the law;
- The JHSC's rules of procedure and requirements, such as number of members it must have, how often it must meet and so on;
- The company's workplace safety policies and programs;
- The hazards specific to your workplace and your

industry;

- The role of the JHSC in inspections, hazard identification, investigations, worker complaints and work refusals; and
- Basic problem-solving strategies and communications skills.

Insider Says: For more on JHSC training requirements, see "The Joint Health & Safety Committee: What Kind of Member Training Does the Law Require?" Dec. 2006, p. 1.

Q: Do You Have to Pay Workers for Being on the JHSC?

A: Workers should be paid for being on the JHSC. After all, although attending a JHSC meeting may not be a member's usual work assignment, it's still a work-related function and an important one. As a result, the OHS laws typically require workers to be paid or specify that they shouldn't lose pay or benefits for time spent on JHSC duties, such as preparing for and attending committee meetings and conducting workplace inspections.

Q: How Is the JHSC Run?

A: The best way to run a JHSC is by setting "rules of procedure" (also called "terms of reference") for its operations. In fact, some OHS laws require JHSCs to have their own rules of procedure. The rules should be comprehensive and address all of the JHSC's functions at a minimum, including:

- Committee membership, such as how long members serve;
- Meetings, including how conflicts will be resolved;
- Inspections and investigations;
- Recommendations to the employer;
- Work refusals; and
- Training.

Insider Says: For more information on JHSC rules of procedure, see "The Joint Health & Safety Committee: What Are 'Rules of Procedure' & Why Your Committee Needs Them?" June 2010, p. 1. And you can download a checklist of the areas your JHSC's rules of procedure should cover, a questionnaire for use when developing rules of procedure and model rules of procedure.

Even if your jurisdiction doesn't require rules of procedure, your JHSC should have them anyway.

Rules provide structure that allows the committee to function well. For example, when a situation such as a safety incident or work refusal arises, JHSC members won't have to improvise. Instead, there will already be a system in place to help them effectively respond to that situation.

Q: How Often Must the JHSC Meet?

A: The most basic function of a JHSC is holding regular meetings. As a result, the OHS laws not only require JHSCs to conduct regular meetings but also spell out detailed requirements for those meetings, including how often they must be held. The jurisdictions generally require committees to hold either monthly or quarterly meetings, that is, once every three months. In addition, some jurisdictions require a JHSC to hold an initial meeting soon after it's established and then meet regularly thereafter. This first meeting may need to be held anywhere from within 10 days to one month after the JHSC is established.

Note that the OHS law sets the minimum frequency for regular meetings. JHSCs can decide to meet more often than required. In fact, JHSCs, especially those in particularly hazardous workplaces, should consider meeting monthly even if they're not required by law to do so. And the committee may also need to occasionally hold special meetings, such as after a safety incident, to address a work refusal or to plan for the following year.

Q: What Should Happen at Committee Meetings?

A: In general, JHSC meetings should be run according to an agenda that's given to members before the meeting. Although the co-chairs generally set the agenda, they shouldn't monopolize it. That is, the co-chairs should add items based on suggestions from other members, management and workers. A typical JHSC regular meeting agenda includes:

- A review of the minutes of the last meeting;
- A review of old business:
- A discussion of the most recent workplace inspection;
- A discussion of safety concerns raised by the workers;
- A discussion of new business, such as recent safety incidents, new equipment in the workplace, changes in the OHS laws or government orders;
- A discussion of any seasonal issues, such as cold stress in the winter and heat stress in the summer; and
- Decisions on how to address new issues, such as determining if any formal recommendations

JHSC COMPLIANCE CENTRE

For more detailed answers to these and any other questions you may have about JHSCs, go to the OHS Insider's JHSC Compliance Centre, which contains:

- 5 tips for more effective safety inspections
- A special report on everything you need to know about JHSCs
- 5 common JHSC flaws
- Model tools, such as a JHSC recommendation form and a meeting template
- And much more.

should be made to the employer about identified safety hazards.

Q: Must JHSC Meetings Be Documented?

A: Yes. *Every* jurisdiction requires the JHSC to keep minutes of its meetings. The minutes should be used to not only summarize what occurred in the meeting but also document the JHSC's performance of its functions and compliance with its duties under the OHS laws. In addition, the meeting minutes could be valuable evidence of due diligence if the company is charged with an OHS violation.

As to the form of the minutes, some jurisdictions have specific minutes forms that the JHSC must use, while others let committees use whatever form they want. Either way, the JHSC should make its meeting minutes available to all workers. In fact, the OHS laws may require you to post them in the workplace. In addition, you may have to provide them to a government safety inspector on request.

Insider Says: For more information on JHSC meeting requirements, see "The Joint Health & Safety Committee: How to Comply with JHSC Meeting Requirements," April 2009, p. 11. And you can download a meeting template.

Q: How Often Should the JHSC Inspect the Workplace?

A: The OHS laws generally require JHSCs to conduct workplace inspections or to participate in inspections conducted by the employer. How often they must do so depends on the jurisdiction and the nature of the workplace.

Some OHS laws specify how often workplaces must be inspected, such as monthly or at least once before each regular JHSC meeting. But others simply require "regular" inspections or inspections at "reasonable intervals." What does that mean? The answer varies depending on the size of the workplace and the level of risk involved in the operations. In many cases, monthly inspections will be adequate. And in low risk workplaces, such as office settings, quarterly inspections may be sufficient. But high risk workplaces or high risk areas within workplaces may need to be inspected more frequently—even if monthly inspections are all that the OHS law requires. For example, you might inspect the assembly line in a factory weekly, but only inspect its administrative offices a few times a year.

Q: What's the Purpose of JHSC Inspections?

A: The basic goal of a JHSC inspection is to identify safety hazards or potential safety hazards. While conducting the inspection, the members should not only look for hazards themselves but also speak to workers and supervisors about any safety issues or concerns they may have. Any identified safety hazards should be documented. The JHSC should discuss in its next meeting ways to address the identified hazards and make recommendations to the employer on how to do so. And then during the next inspection, the members should note whether the previously identified hazards have been properly addressed.

Insider Says: For more on JHSCs and inspections, see "The Joint Health & Safety Committee: Part 1: The Committee's Role in Workplace Inspections," Sept. 2007, p. 1 and "The Joint Health & Safety Committee: Part 2: Five Steps for Effective Workplace Inspections," Oct. 207, p. 1. And you can download and adapt a workplace inspection worksheet for use during JHSC inspections.

BOTTOM LINE

It's critical that safety coordinators understand the requirements in the OHS laws for JHSCs and take steps to ensure that their committees comply with these requirements. Doing so will not only avoid liability for safety violations but also help the JHSC do its job well and thus improve overall safety in the workplace.

MORE FAQS

Go to OHS Insider for the answers to two more frequently asked questions:

- Must the Employer Implement all JHSC Recommendations?
- Could JHSC Members Be Liable under So-Called "C-45"?

AROUND THE PROVINCES

Housekeeping Requirements under the OHS Laws

eeping the workplace clean and neat isn't just about appearances. Poor housekeeping practices can create safety hazards. For example, floors covered in dirt, grime, grease and other substances can cause slips-and-falls. (For more on the importance of good housekeeping, read this article by OHS consultant Barbara Semeniuk.) The chart below shows the general housekeeping requirements under the OHS law of each jurisdiction. Note that the chart doesn't cover housekeeping requirements for specific types of workplaces, such

as offices or construction sites, or types of buildings, such as temporary structures.

Use this model housekeeping checklist to inspect your workplace and evaluate the adequacy of your housekeeping efforts. At SafetyPoster.com, you can buy posters promoting good housekeeping practices. And at Safety Smart, you can get a safety talk for workers on the consequences of poor housekeeping. Not a Safety Smart member? Sign up for a free 14-day trial.

	GENERAL HOUSEKEEPING REQUIREMENTS	RELEVANT LAWS
FED FED	1) Every exterior stairway, walkway, ramp and passageway that may be used by workers must be kept free of accumulations of ice and snow or other slipping or tripping hazards [Sec. 2.14(1)]. 2) All dust, dirt, waste and scrap material in every workplace in a building must be removed as often as is necessary to protect workers' health and safety and shall be disposed of in a manner that doesn't endanger workers' health and safety [Sec. 2.14(2)]. 3) Every travelled surface in a workplace must be: a) slip resistant; and b) kept free of splinters, holes, loose boards and tiles and similar defects [Sec. 2.14(3)]. 2) Where a floor in a workplace is normally wet and workers in the workplace don't use non-slip waterproof footwear, the floor must be covered with a dry false floor or platform or treated with a non-slip material or substance [Sec. 2.15].	<u>Canada OHS Regs</u>
# AB	An employer must ensure that a worksite is kept clean and free from materials or equipment that could cause workers to slip or trip [Sec. 185].	OHS Code 2009
BC	1) Floors, platforms, ramps, stairs and walkways available for use by workers must be maintained in a state of good repair and kept free of slipping and tripping hazards [Sec. 4.39(1)]. 2) If a work process results in a liquid accumulating on the floor or grade surface in a work area and the liquid creates a slipping or other hazard, floor drains or other suitable means must be used to control the hazard [Sec. 4.40]. 3) Refuse, spills and waste material must not be allowed to accumulate so as to constitute a hazard [Sec. 4.41].	OHS Reg.
MB	1) An employer must ensure that, so far as is reasonably practicable, a workplace is: a) kept in a clean and sanitary state; and b) kept free from any condition that may create a risk to a worker's safety or health [Sec. 2.14]. 2) An employer must ensure that all work areas are, so far as is reasonably practicable, kept clear of snow and ice accumulations [Sec. 2.17(a)]. 3) An employer must ensure that floors, platforms, walkways, ramps and stairs available for use by a worker are maintained in a state of good repair and kept free of slipping and tripping hazards [Sec. 4.5(1)].	Workplace Safety and Health Reg.
NB	1) An employer must ensure that a place of employment is kept in a clean and sanitary condition and in a good state of repair so as not to affect adversely the health and safety of a worker [Sec. 15]. 2) An employer must ensure that containers used for refuse are emptied at frequent intervals and constructed to withstand the intended use [Sec. 17]. 3) An employer and a contractor must each keep outdoor passageways from becoming slippery by removing ice or snow and using materials such as ashes, sand or salt where necessary [Sec. 102(8)].	OHS Reg.
NL NL	1) Where the regular work process results in liquid spilling on to the floor or work areas and where this spillage could introduce a slipping or other hazard, floor drains must be installed or other suitable means used or adopted to eliminate this hazard [Sec. 34(1)]. 2) Where wet processes are used, an employer or contractor must ensure that reasonable drainage is maintained and that false floors, platforms, mats or other dry standing places are provided and kept clean [Sec. 34(3)]. 3) An employer must ensure that the workplace is sanitary and kept as clean as is reasonably practicable and that: a) accumulated dirt and refuse is removed daily by a suitable method from floors, working surfaces, stairways and passages; b) floors are cleaned at least once a week by washing, vacuum cleaning or other effective and suitable means; c) interior walls and partitions, ceilings, passages and staircases are kept in a reasonable state of repair and suitably finished and maintained; and d) floors, platforms, stairs and walkways used by workers are kept in a state of good repair and free of hazards [Sec. 67].	OHS Reg. 2012
T & NU	1) A floor, platform, stair and walkway used by workers must be maintained in a state of good repair and kept free of hazards [Sec. 23]. 2) Where work processes result in the spillage of liquids on the floor of a work area and where the spillage could create a slipping or other hazard, floor drains must be installed or other suitable means must be adopted to control the hazard [Sec. 24]. 3) No person may allow refuse or waste material to accumulate so as to constitute a hazard [Sec. 25].	<u>General Safety</u> <u>Regs.</u>

	GENERAL HOUSEKEEPING REQUIREMENTS	RELEVANT LAWS
NS NS	1) An employer must ensure that waste material and debris are removed from a workplace to a suitable disposal area on a regular basis, so as to prevent a hazard [Sec. 24]. 2) An employer must ensure that a floor, stairway, passageway or similar walking surface is designed, constructed and maintained so as not to create a hazard to a person in the workplace [Sec. 139(1)]. 3) Where a floor, stairway, passageway or similar walking surface at or near a workplace becomes slippery as a result of weather or climatic conditions, an employer must ensure that the floor, stairway, passageway or similar walking surface is kept free from falling or slipping hazards by removing ice, snow or water, to the extent reasonably practicable, and using materials such as ashes, sand, salt, or other measures where appropriate to prevent slipping or falling [Sec. 139(3)].	Occupational Safety General Regs
ON	1) A floor or other surface used by any worker must: a) be kept free of: i) obstructions; ii) hazards; and iii) accumulations of refuse, snow or ice; and b) not have any finish or protective material used on it that is likely to make the surface slippery [Sec. 11]. 2) Removal of material must be done in such a way as not to cause a hazard [Sec. 126].	Industrial Establishments Reg.
PE	1) In every workplace, the employer must ensure that: a) all personal service rooms such as locker rooms, lunch rooms, canteens, wash rooms and rest rooms are: i) kept free of insects or vermin of any kind; ii) maintained in a bright, clean and sanitary condition at all times; and iii) adequately ventilated [Sec. 5.1(a)]; b) surfaces of walls and ceilings, including windows and skylights, are kept clean and in a good state of repair [Sec. 5.1(b)]; c) floors are even and free from anything that may create a stumbling hazard [Sec. 5.1(f)]; d) floors are kept dry and in a non-slippery condition except in areas where floors remain wet because of the work process [Sec. 5.1(g)]; e) if gasoline, oil or grease is spilled on floors so as to constitute a slipping or fire hazard, the area affected is cleaned up immediately [Sec. 5.1(j)]; f) combustible materials, such as shavings, waste, oily rags, etc., aren't allowed to accumulate on floors, benches or in places where they would constitute a fire hazard [Sec. 5.1(j)]; g) flammable rubbish, weeds and grass aren't allowed to accumulate in yards around buildings or around flammable material storage [Sec. 5.1(k)]; h) suitable receptacles of substantial construction which don't leak are provided for the disposal of rubbish [Sec. 5.1(m)]; i) waste material and debris are removed daily, or more often if necessary, from the building or structure to a suitable disposal area to prevent a hazardous condition [Sec. 5.1 (n)]; j) work areas are cleaned as often as necessary considering the nature of work carried on [Sec. 5.1(p)]; k) where cleaning must be done during working hours i.e. sweeping, every effort is made to prevent dust [Sec. 5.1(q)]; l) scrap materials, parts, etc., are properly disposed of when a job is completed [Sec. 5.1(r)]; and m) every scaffold, runway, stairway, passageway and ramp is: i) kept clear of obstructions at all times; ii) kept clear of ice, snow or other slippery materials; and iii) when necessary to ensure firm footing, sprinkled with sand or other sui	OHS Regs
QC	 1) Access routes providing access to buildings and reserved pedestrian passages must be: a) kept in good condition and free from any obstructions; and b) maintained to keep the surface from becoming slippery [Sec. 6]. 2) Any floors must be kept in good order, clean and free from any obstruction [Sec. 14]. 3) Walkways inside a building must be: a) kept in good order and free from any obstruction; and b) maintained to keep the surface from becoming slippery, even through wear or humidity [Sec. 15]. 4) A work station must be: a) kept in good condition and free from any obstructions; and b) situated on a surface that's maintained so as not to become slippery, even through wear or humidity [Sec. 16]. 5) The upkeep of the work premises of an establishment must be ensured through vacuuming, wet mopping or any other method that controls and reduces the stirring up of dust [Sec. 17]. 6) Refuse, sweepings and other residues must be removed from work stations. Appropriate containers must be available in various locations for such purpose [Sec. 18]. 	Regulation respecting occupational health and safety
SK	1) An employer, contractor or owner must ensure that a place of employment is sanitary and kept as clean as is reasonably practicable and, to the extent that is reasonably practicable, that: a) dirt and debris are removed at least daily by a suitable method from all floors, working surfaces, stairways and passages; b) floors are cleaned at least once each week by washing, vacuum cleaning or any other effective and suitable method; and c) all inside walls, partitions, ceilings, passages and staircases are clean and are suitably finished and maintained [Sec. 64(1)]. 2) Where a worker may be exposed to refuse, spills or waste materials that may pose a risk to the worker's health or safety, an employer or contractor must ensure that the refuse, spill or waste material is removed by a suitable method from the worksite as soon as is practicable [Sec. 64(2)].	OHS Regs
YT	1) All floors, decks, platforms, stairs, ramps, walkways, aisles and catwalks must be maintained in good repair and free of tripping and slipping hazards [Sec. 1.51(1)]. 2) Immediate action must be taken to eliminate or control slipping or any other hazard originating from a spill or leak of a substance on a floor or other working surface [Sec. 1.51(2)]. 3) Where a floor is wet because of the work process, devices such as matting or grating must be used to eliminate the hazard of slipping [Sec. 1.51(3)]. 4) Proper clean-up and disposal methods, which don't create hazards to the worker, other people, equipment, structures or the environment must be adopted and used [Sec. 1.51(4)]. 5) Linoleum or other smooth or polished surfaces must be treated with a nonslip preparation [Sec. 1.55(1)]. 6) Rugs must be maintained in good condition and torn or damaged floor coverings must be replaced or repaired immediately [Sec. 1.55(2)]. 7) Entrance steps and stairs to buildings must be kept free from ice or snow at all times [Sec. 1.55(3)].	OHS Regs

MANAGING YOUR OHS PROGRAM

7 Keys to an Effective Safety Culture

t's widely agreed that a key to improving safety is to create a "culture of safety." Companies typically describe a desired safety culture in terms of values. Although values are the foundation, safety culture is ultimately expressed through what's said and done—through behaviour, according to Judy Agnew, senior vice-president of Safety Solutions, Aubrey Daniels International. "While each organization has its own description of an ideal safety culture, there are some elements that should be common to all," says Agnew, who offers the following seven keys to an effective safety culture:

- 1. The entire workforce relentlessly pursues the identification and remediation of hazards. Correcting hazards as quickly as possible and maintaining good communications around hazards will not only create a safer workplace but also improve your workers' engagement. "Frontline employees who believe management takes care of hazards are more willing to participate fully in safety initiatives," says Agnew. (Give this briefing to senior management so they understand the importance of a company's safety culture.)
- 2. Employees at all levels are equally comfortable stopping each other when at-risk behavior is observed and recognizing each other when safe behavior is observed. Although good constructive feedback is important for improvement, positive reinforcement for safe behaviour is essential for building safe habits.
- **3.** No one is blamed for near misses or incidents. Instead, systemic causes are pursued. Often when people engage in at-risk behaviours that lead to incidents, there are organizational systems and practices that inadvertently encourage those atrisk practices. "It is important to uncover those and establish accountability for making the changes to the systems and practices to encourage safe behavior," Agnew says. (For more information on handling near misses, see "OHS Program: 8 Steps for Effective Near Miss Management," April 2012, p. 1.)
- 4. The fear of discipline, which drives under-reporting and stifles involvement, has been driven out of the culture. Discipline has a place, but most safety issues can be effectively dealt with without discipline, which has side effects that work against building a culture of safety, according to Agnew. (Remember—you can't discipline workers for exercising safety rights, such as the right to refuse unsafe work, but you can discipline them for violating safety rules and procedures.)

- 5. The workforce is characterized by good relationships at all levels. These relationships enable open, honest conversations about what's working, what isn't and what still needs to change.
- **6. Safety is integrated into day-to-day work.** It's not treated as something separate from daily operations.
- **7. Successes are celebrated along the way.** Pride shouldn't be focused solely on a company's safety record, but also in what's being done every day, all day to achieve that record.

BOTTOM LINE

"Once you have defined the ideal safety culture for your organization, the science of behaviour analysis can be used to develop behaviours consistent with that culture," says Agnew. "Targeted positive reinforcement of desired behaviours leads to rapid change and the effects multiply quickly as all employees begin to not only display desired cultural behaviors, but to reinforce those behaviors in others."

INSIDER SOURCE

Judy Agnew: Senior Vice-President of Safety Solutions, Aubrey Daniels International

FEATURED TOOLS

Every week, at least one new tool is featured on OHSInsider. com. Here are just a few of the recently featured tools you can download and adapt for your workplace:

- Checklist for Preparing Vehicle for Winter Driving
- 2. Corporate Social Responsibility Assessment Checklist
- 3. Model Cold Stress Policy
- 4. Model Contractor Safety Policy
- 5. Model Family Violence Policy



DOS & DON'TS

Notify Workers of Changes to Enforcement of Safety Rules

mployers can always change their approach to enforcing safety rules. For example, if there's been a spate of safety incidents involving the violation of a particular rule that hadn't been strictly enforced, it's smart to begin enforcing that rule more strictly now to prevent similar incidents. But you must let workers (and the union, if applicable) know about such changes in advance. Otherwise, they may be able to successfully challenge any discipline you impose under the new enforcement policy as being inconsistent with discipline imposed on other workers for similar infractions in the past.

A BC sawmill learned this lesson the hard way. It suspended a worker for six days for smoking near a propane tank and not in a designated smoking area and for not wearing a hardhat or safety glasses in an area where such PPE was required. The union challenged the discipline.

The arbitrator said the worker was clearly in violation of several company safety policies. He'd also been warned before about similar conduct. And he didn't immediately acknowledge that he was wrong. But given how the mill had treated other workers who'd violated these policies, a six-day suspension was

excessive. The arbitrator explained that if the sawmill was going to change its approach to enforcing these safety policies "because of a heightened concern about safety within its mill, the employees in the bargaining unit and the Union were entitled to notice of that change before it was implemented. In my view, fairness required it." Otherwise, the first worker affected by that change would be unfairly discriminated against, added the arbitrator. So he reduced the suspension to three and a half days [Tolko Industries Ltd. (Kelowna Division) v. United Steelworkers, Local 1-423 (Holmes Grievance), [2012] B.C.C.A.A.A. No. 130, Oct. 22, 2012].

Insider Says: OHS lawyer Cheryl A. Edwards spoke about disciplining for safety at the OHS Summit 2012. Watch this video interview of Cheryl explaining the importance of giving workers notice of changes in how you're going to enforce safety rules. And go to the Discipline and Reprisals Compliance Centre for more information on properly disciplining workers for safety infractions.