

The Occupational Health & Safety ACT on Farming Operations

Ontario's Occupational Health & Safety Act (OHSA)

came into force in October 1979. The main principle of the OHSA is that workers, supervisors and employers share the responsibility for health and safety in the workplace. The OHSA sets out the rights and duties of all workplace parties and it gives Ministry of Labour inspectors the authority to inspect the workplace to ensure compliance with the OHSA, and to investigate complaints, critical injuries and fatalities.

Until now, farming operations have been exempt from the OHSA. Since early 2004, the Ministry of Labour (MOL) and the Ministry of Agriculture, Food and Rural Affairs (OMAFRA) have been working with the agricultural industry, through the Labour Issues Co-ordinating Committee (LICCC), a coalition of about 20 agricultural commodity and farm organizations, to develop the appropriate application of the OHSA to farming operations.

Farming Operations to come under the OHSA on June 30, 2006.

In June 2005, the government made a new regulation that will extend the OHSA to farming operations with paid workers. It will come into effect on June 30, 2006. This means that the rights and duties for workers and employers outlined in the OHSA will apply; inspection and enforcement will apply; and both workers and employers will participate in workplace health and safety matters. Farming operations without paid workers will continue to be exempt from the OHSA.

OMAFRA and MOL are continuing to work with the Farm Safety Association and the agricultural industry to develop best practices to address specific hazards.

Employers

Under the OHSA, the duties of employers include providing information, instruction and supervision to workers; advising workers about hazards in the workplace; and notifying the MOL of workplace fatalities and critical injuries. Employers with six or more regularly employed workers also have to develop an occupational health and safety policy and program.

Workers

Farm workers will have the right to participate in decisions about health and safety at the workplace, to know about workplace hazards, and to refuse unsafe work.

MOL & OMAFRA will be hosting public information sessions for employers and employees regarding the Occupational Health & Safety Act and farming operations. These will take place on the following dates and locations:

Date	Location
February 14	Stratford
February 15	Hanover
February 20	Bradford
February 21	Sudbury
February 22	Leamington
February 27	Brighton
February 28	Kemptville
March 2	Alfred
March 7	Simcoe
March 8	Vineland

For more information, or to register for one of the sessions, please call the Agricultural Information Contact Centre at 1.877.424.1300. For the sessions in Northern Ontario on February 21, please contact the Northern Ontario Regional Office at 1.800.461.6132.

General Application

Q. Will the Occupational Health & Safety Act (OHSA) apply to all farms?

A. No. The OHSA will only apply to farms with paid workers. It will not apply to the self employed farmer who does not have paid workers.

Q. A farm owner/operator hires one person to help out at peak times, usually once or twice a year, for a few weeks at a time. Does the legislation apply?

A. The OHSA will apply whenever there is a paid worker on the farm, even if it is only for a short period of time. At these times, the owner/operator will have all the applicable responsibilities under the OHSA. It will not apply at those times of the year when there are no paid workers on the farm.

Q. I don't have any employees but my children work on my farm during their summer holidays. I don't pay them a salary but I purchased a car for one and paid the other's university tuition. Does the OHSA apply?

A. No. If your children are not paid a salary or wages for their work, the MOL would not consider them to be "workers" for the purposes of the OHSA.

Q. A husband and wife are self-employed farmers with no paid workers. They have incorporated their business for tax purposes. They each draw salaries from their company and receive T4 slips. Are they workers of the company for the purposes of the OHSA? Is such an operation covered by the OHSA?

A. MOL would consider the husband and wife to be self employed and the OHSA would not apply to this operation just because it is incorporated and the owners collect a salary.

Q. How much is it going to cost farmers to comply with the OHSA? Will the new legislation put farmers out of business?

A. For some employers there may be some costs related to compliance with the new requirements; however, from our recent discussions with the industry, many operators already appear to be doing what the law will require.

Farmers have until June 30, 2006 to learn about the new requirements

and to bring their operations into compliance, where necessary. The new requirements will help prevent workplace injuries and fatalities, and overall, should lead to cost savings for employers such as paying lower insurance premiums to the Workplace Safety and Insurance Board (WSIB). Currently the WSIB estimates that the average cost of a workplace accident is about \$59,000.

You have until June 30, 2006 to become familiar with your new duties and to make any changes that may be needed.

Employers

Q. As an employer, what are my responsibilities under the OHSA?

A. The main responsibilities you will have under the OHSA will be to:

- provide information, instruction and supervision to workers;
- advise workers and supervisors about hazards in the workplace;
- notify MOL of workplace fatalities & critical injuries;
- cooperate with the workplace joint health and safety committee or the worker health and safety representative; and,
- take every precaution reasonable in the circumstances to protect workers.

Detailed information about your new responsibilities will be available from the Farm Safety Association, the Ministry of Labour and the Ministry of Agriculture, Food and Rural Affairs.

You have until June 30, 2006 to become familiar with your new duties and to make any changes that may be needed. Throughout the coming months, educational materials and programs will be available to help you understand the new requirements and to comply with them.

Q. As an employer, should I be concerned about work refusals slowing or stopping my business during peak work periods?

A. The OHSA sets out a process that an employer and worker must follow when there is a work refusal. If a refusal cannot be resolved internally, at the first stage, by the workplace parties, a MOL inspector must be called. Inspectors treat work refusal calls as a priority and will respond as quickly as possible.

Inspectors will also visit workplaces when called in to investigate an accident, a work refusal or a complaint.

Ideally, because of the "internal responsibility system" provided for in the OHSA, employers and workers will be able to resolve health and safety issues that arise at a workplace themselves, without the need to call in an inspector.

Q. If an inspector sees a violation of the OHSA, will my operation come to a halt and for how long?

While waiting for an inspector to come, the employer can assign another worker to do the work that was refused. The second worker must be told that the work was refused and why. This must be done in the presence of one of the following:

- a worker member of the joint health and safety committee, if there is one; or,
- a worker health and safety representative in workplaces where there is no committee; or,
- another worker, chosen by the workers to represent them, because of his or her knowledge, experience and training.

The second worker has the same right to refuse as the first worker.

In most cases, a health and safety issue can be resolved long before it becomes grounds for a work refusal, usually through mechanisms such as the joint health and safety committee or the worker health and safety representative.

Employees

Q. Is this really going to protect farm workers?

A. Yes, it is going to protect farm workers. Because of this regulation, farm workers will now have the same types of basic rights under the OHSA that other Ontario workers already have. These are important rights and include the right to refuse unsafe work; the right to know about workplace hazards; and, the right to participate in decisions about health and safety on the job.

Q. Will the OHSA apply to foreign farm workers?

A. Yes. The OHSA will apply equally to domestic and foreign farm workers in Ontario.

A. An inspector's enforcement action depends on the type of violation. If an inspector observes a violation of the OHSA the inspector will issue an order for compliance. There are three different types of orders:

- **Time-based order** – compliance must be achieved within a time frame determined by the inspector in consultation with the employer and worker representative (where there is one).
- **Forthwith order** – efforts to achieve compliance must begin immediately and be

Enforcement/Inspections

Q. Will MOL inspectors routinely inspect farming operations?

A. The MOL will develop an inspection plan for farming operations. The MOL typically focuses its inspections on high-risk employers (employers with higher than average lost-time injury rates and claims costs) and on workplaces with operations and equipment known to be hazardous.

Joint Health & Safety Committees / Worker Health & Safety Representatives

Q. What is a Joint Health & Safety committee? What does it do?

A. A Joint Health & Safety committee is composed of people who represent both management and the workers at a workplace. Together they identify workplace hazards & make recommendations to the employer to improve the health and safety of workers.

While in general, the OHSA requires a Joint Health & Safety committee to be set up at a workplace with 20 or more regularly employed workers, some limitations for farming operations exist (see next question).

MOL has a guide for *Health & Safety Representatives & Joint Health & Safety Committees on Farming Operations* that explains in detail how a joint committee should be set up and function. The guide is available on the Ministry's web site at www.labour.gov.on.ca

Q. When is a Joint Health & Safety committee required on a farming operation?

A. Not all farms will require a Joint Health & Safety committee. Farms will require a Joint Health & Safety committee if there are 20 or more workers who are regularly employed and have duties related to one or more of the following operations:

Greenhouse	Mushroom	Dairy
Hog	Cattle	Poultry

These six types of farms were selected because they typically hire workers on a year-round basis. The threshold of 20 workers has been in the OHSA since it first came into force in 1979.

Q. Who is considered "regularly employed"?

A. Regularly employed includes:

- Permanent full-time staff
- Permanent part-time staff
- Contract staff
- Seasonal workers.

Q. Who is counted for the purpose of determining whether a Joint Health & Safety committee or a worker representative is needed?

A. All those who are regularly employed for a period that exceeds three months are counted, including managers and supervisors who work at the workplace.

Q. What if a farming operation is mixed – part of it falls under one of the six types but the rest of the operation does not. When is a Joint Health & Safety committee required on a mixed operation?

A. For a Joint Committee to be required on a mixed operation, there must be 20 or more regularly employed workers who all have duties related to one or more of the six types listed above.

Q. What is a certified member of a Joint Health & Safety committee and when are they required?

A. A 'certified' member of a Joint Committee is a member who has received special training in occupational health & safety and has been certified by the Workplace Safety and Insurance Board (WSIB).

In general, the OHSA requires two members of a Joint Health & Safety committee to be certified, one representing management and the other representing workers. On farms, the requirement for certified members is limited to those operations that are required to have a Joint Health & Safety committee and where 50 or more workers are regularly employed.

Detailed information about certification training is available from the WSIB. You can contact the WSIB by phone at 1.800.663.6639 or by email at prevention@wsib.on.ca

Q. When is a Worker Health & Safety Representative required instead of a Joint Committee?

A. A worker representative is required on:

- all farms with 6 to 19 regularly employed workers, regardless of the type of farm or commodity; and on,
- farms that have 20 or more regularly employed workers that are not required to have a Joint Committee

Q. Who selects the Worker Health & Safety Representative or the worker members of a Joint Health & Safety committee?

A. The workers at a workplace who do not have any managerial function must select the Worker Health & Safety Representative or the worker members of a Joint Health & Safety committee. Worker Health & Safety Representatives and worker members of a joint committee cannot be appointed by the employer or by management.

completed before the inspector leaves the workplace (e.g. clearing a blocked fire exit); or

- **Stop work order** – used when an inspector finds that the violation is an immediate danger or hazard to the health or safety of a worker (e.g. unguarded machinery that is being used). A stop work order will be withdrawn upon compliance.

Q. Will inspectors be trained to inspect farming operations?

A. Yes. The MOL will develop training

programs for its inspectors and in so doing, will consult the Ministry of Agriculture, Food and Rural Affairs, the Farm Safety Association and the agriculture industry to ensure that the training is comprehensive and appropriate.

The MOL recognizes that inspectors entering farms need to be aware of certain circumstances and hazards unique to such operations; for example, the need to establish inspection protocols and to take precautions so that there is no biological cross-contamination between farms.

Q. What are the penalties for violating the OHSA or its regulations?

A. The MOL may prosecute any person for a violation of the OHSA or the regulations, or for failing to comply with an order of an inspector, a Director or the Minister.

If convicted of an offence under the OHSA, an individual can be fined up to \$25,000 and/or imprisoned for up to 12 months. The maximum fine for a corporation convicted of an offence is \$500,000.



Training

Q. What kind of health and safety training do I have to give my workers?

A. In general, you have to make sure your workers are aware of any hazards they will encounter on the job, and you have to give them enough information & instruction about these hazards, to allow them to work in a healthy and safe manner.

Q. How much information and instruction is enough? Is there a specific training course my workers have to take?

A. There is no specific course and no set amount of training. The requirements are flexible so that you can assess how much information a worker needs to work safely, based on the job that the worker is doing and the hazards that are present.

Workers do not have to be trained on every hazard in the workplace – just the ones that they may be exposed to. But there is an obligation to ensure that the workers have understood the information and instruction you have given them and can apply it to their jobs.

Q. Where can I get the information I need? Who can help me?

A. The Farm Safety Association (FSA) has health and safety literature and videos on a full range of farm hazards. You can use these to provide the appropriate information to your workers. Or, if you prefer, the FSA can carry out on-site worker training programs for you.

If you need help identifying the hazards on your farm, you can get a copy of the Agricultural Safety Audit Program from the FSA. It is a handbook that will help you identify the hazards in your operation, assess the risks and take corrective action.

Regulations under the OHSA

There are over 30 regulations under the OHSA that set out in detail how the workplace parties are to carry out some of the duties that are generally described in the Act. These regulations address many different things, for example, –types of workplaces (mines, construction sites, hospitals); types of work (window cleaning, diving); specific chemical hazards (asbestos, mercury).

Q. Which regulations under the OHSA apply to farming ?

A. Farming operations will be exempt from all but three of the regulations under the OHSA.

The three regulations that will apply are:

- I **Regulation 834**, which defines the term “critical injury”. Employers are required to notify the MOL of a critical injury at the workplace.
- II **Regulation 780/94**, which requires the employer to pay for the training of certified members of a joint health and safety committee.
- III **Regulation 572/99**, which gives MOL inspectors the authority to enforce requirements established by the Ministry of Training Colleges and Universities, that workers performing certain restricted trades (for example, an electrician or steamfitter) must be appropriately qualified / certified.

Q. Will regulations that apply specifically to farming be developed in the future, like the ones the MOL currently has for construction projects or mines? How will farmers and workers know what to do to control specific hazards?

A. MOL and OMAFRA are working with the farming community and the Farm Safety Association to develop a set of best practices that will address specific hazards. The first set of best practices will be available in early 2006.

The Farm Safety Association wishes to thank the **Ontario Ministry of Agriculture and Food** for their support and assistance in promoting Health & Safety to Ontario’s agricultural community.



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