

CANADIAN LEGISLATION RELATING TO JOINT OCCUPATIONAL HEALTH AND SAFETY COMMITTEES

Jurisdiction/Legislation

Joint Occupational Health and Safety Committees

Federal

Canada Labour Code (Part II) and Safety and Health Committees and Representatives Regulations

A workplace health and safety committee is mandatory in each workplace where 20 or more employees are normally employed¹, except in a workplace that is on board a ship in respect of employees whose base is the ship (s.135(1), (2)). The Minister of Labour may, on any specified terms and conditions, exempt an employer from the requirement to establish a committee if, after considering various factors, he/she is satisfied that the nature of work being done by the employees is relatively free from risks to health and safety (s.135(3)). In addition, a health and safety officer may exempt an employer from this requirement if a committee has been established pursuant to a collective agreement or any other agreement between the employer and its employees, which has, in the opinion of the health and safety officer, a sufficient responsibility for health and safety matters in the workplace. Such a committee is deemed to be a workplace committee established under Part II of the Code (s.135(6)). The legislation outlines the powers of committees² (s.135(7)). An employer must respond in writing to recommendations made by a workplace committee within 30 days after receiving them, indicating what, if any, action will be taken and when it will be taken (s.125(1)). A member of a workplace committee must be compensated by the employer for time spent performing his/her functions (including authorized preparation and travel time), whether performed during or outside regular working hours, at the regular rate of pay or premium rate, as specified in a collective agreement or, if there is no such agreement, in accordance with the employer's policy (s.135.1(11)). There is a general prohibition against dismissing an employee, taking disciplinary action against him/her or imposing another penalty for an action carried out in accordance with Part II of the Code and a right to complain to the Canada Industrial Relations Board (ss. 133, 134 and 147).

The selection of members of a committee, the filling of vacancies, the quorum for meetings, the taking of minutes of meetings and the annual reports of committees are regulated by the *Safety and Health Committees and Representatives Regulations* (Regs. ss. 3 to 10).

Alberta

Occupational Health and Safety Act and Joint Work Site Health and Safety Committee Regulations

Health and safety committees may be required by the Minister responsible for workers' health and safety¹. Their duties are listed in the Act² (s.31(1)). There is protection against dismissal or disciplinary action for a committee member performing his/her duties and a right to file a complaint with an occupational health and safety officer and, subsequently, to ask that the Occupational Health and Safety Council review the matter (ss.31(5), 36 and 37). The regulations define the committee structure, the appointment or election of members, the holding of meetings, the carrying out of inspections, etc. (Regs. ss.2 to 10)

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British Columbia

Workers Compensation Act (WCA) and Occupational Health and Safety Regulation; Mines Act, and Health, Safety and Reclamation Code for Mines in British Columbia (Code);
Board means the Workers' Compensation Board.

Manitoba

Workplace Safety and Health Act and Workplace Safety and Health Committee Regulation

Joint Health and Safety Committees

A health and safety committee is mandatory in workplaces with 20 or more workers who are regularly employed or when required by order¹. The WCA specifies their duties and functions². When a committee makes written recommendations, the employer must respond in writing within 21 days if requested to do so. Reasons must be given if recommendations are not accepted. When it is not reasonably possible to prepare a response within 21 days, the employer must provide a written explanation for the delay. If recommendations are not accepted or there is an unreasonable delay in providing a response, a co-chair of the committee may report the matter to the Board, which may investigate and attempt to resolve the issue or establish a deadline by which the employer must respond. Each year, a committee member is entitled to paid educational leave totalling 8 hours for the purposes of attending occupational health and safety training courses conducted or approved by the Board (WCA ss.125 to 138). There is a general prohibition against dismissal, suspension or other discriminatory action for exercising any right or carrying out any duty in accordance with the Act or regulations, and the right to seek redress through the grievance procedure under a collective agreement or by way of a complaint to the Board. In either case, the burden of proof is on the employer (WCA ss.150 to 153). An occupational health and safety committee must be formed at every mine¹; members participate in inspections and accident investigations. Where 20 or more workers are regularly employed, three training sessions per year must be provided (Mines Act s.32 and Code ss.1.6.1, 1.6.7). Time spent by committee members carrying out their duties is deemed to have been spent at work (WCA s.134; Mines Act, s.32 and Code s. 1.6.10).

A workplace safety and health committee is mandatory where 20 or more workers are regularly employed or where a workplace or class of workplaces is designated by the Director of the Workplace Safety and Health Division¹. If a prime contractor is required for a construction project and the project is likely to require more than 90 days to complete, a committee must be established where 20 or more workers are involved, or expected to be involved. The Act contains a list of the duties of a committee² (s.40). Except on construction projects, each committee member is entitled each year to educational leave without loss of pay or other benefits for the regular number of hours worked during two normal working days for the purposes of attending workplace safety and health training seminars, programs or courses offered by the Workplace Safety and Health Division or approved by the workplace safety and health committee, or, as the case may be, as provided for in a collective agreement. On construction projects, each employer with five or more workers must institute a safety and health education program at which all workers must attend without loss of pay or other benefits for 30 minutes (or two periods of 15 minutes) every two weeks (s.44). An employer (including a prime contractor) who receives written recommendations from a committee identifying anything that may pose a danger to the safety or health of any person, must respond in writing to the committee no later than 30 days after receiving the recommendations, unless the employer implements all the recommendations within that period. The response must contain a timetable for implementing the recommendations that the employer accepts, and give reasons why the employer disagrees with any recommendations that are not accepted. If no agreement can be reached regarding the response of an employer, the matter may be referred to a safety and health officer (s.41.1). Time spent by committee members carrying out their duties is to be remunerated as time worked (s.40 (11)). Workers are protected against dismissal or discriminatory action for performing duties or exercising rights as a member of a committee, and there is a right to file a complaint with a safety and health officer with the burden of proof being on the employer (ss.42, 42.1). The Regulation defines the committee structure, election of members, holding of meetings, posting of information, etc.

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New Brunswick

Occupational Health and Safety Act;
WHSCC means the Workplace Health, Safety and Compensation Commission.

A health and safety committee is mandatory at places where 20 or more workers are regularly employed (s.14(1), (1.1)). The legislation lays down their duties and powers² (s.15). Committee members are entitled to regular remuneration when engaged in committee meetings and to necessary leave to be trained in their duties and responsibilities (s.14 (7), (11), (12)). General provisions protect employees against dismissal or discriminatory action, including loss of wages, if they act in accordance with the Act, by having the matter dealt with by final and binding arbitration under a collective agreement, or by filing a complaint with the WHSCC which refers it to an arbitrator it has appointed with a possible review of the decision on any ground by the Court of Queen's Bench (ss. 24 to 27).

Newfoundland and Labrador

Occupational Health and Safety Act and
Occupational Health and Safety Regulations

WHSCC means the Workplace Health, Safety and Compensation Commission.

An occupational health and safety committee must be established where 10 or more workers are employed at a workplace¹ (s.37). The duties of committees are enumerated in the Act² (s.39). The employer must provide and pay for the training of the members of a committee, if 50 or more workers are employed at a workplace, or for the training of the co-chairpersons of the committee, if there are from 10 to 49 workers. The training must meet the requirements the WHSCC may set. Committee members must participate in training provided under these provisions, and workers must be compensated as if that training were regular work (s.38.1). The employer must respond in writing within 30 days to a recommendation of a committee at a workplace indicating that the recommendation has been accepted or rejected, with a reason for any rejection. The employer must also provide periodic written updates to the committee on the implementation of a recommendation that was accepted until the implementation is complete (s. 5(f.1),(f.2)). There is protection against dismissal or discriminatory action, including deduction of wages or other benefits, for participation in a committee as well as a right to use any grievance procedure provided in a collective agreement with respect to discrimination or file a complaint with the Labour Relations Board; in either case, the burden of proof is on the employer (ss.49 to 52). The Regulations contain requirements regarding the workings of committees (Regs. s.21).

Northwest Territories and Nunavut

Safety Act, Mine Health and Safety Act (MHSA) and
Mine Health and Safety Regulations

A work site health and safety committee is established at the discretion of the Chief Safety Officer¹. A committee member must be paid at his/her regular rate for time spent performing his/her duties (s.7(1), (6)). A committee is mandatory in mines where more than 15 persons are employed¹; the Regulations specify the committee structure, election of members, holding of meetings, etc. Where a committee is required, the mine manager must ensure that committee members are paid at not less than their regular rate of pay for time spent participating in committee activities and that they receive training relating to their functions, in accordance with the regulations (MHSA ss.11(1), 13; Part III of the Regulations). The duties of committees are outlined in both Acts² (s.7(3); MHSA s.12 and Part III of the Regulations). A committee member performing his/her duties is protected against dismissal, disciplinary measures or discriminatory action (s. 22; MHSA ss.19, 20).

Nova Scotia

Occupational Health and Safety Act

A health and safety committee is mandatory at every workplace or at a construction project if there are 20 or more persons regularly employed (s.29(1)). A committee is established at the discretion of the Executive Director of Occupational Health and Safety if there are fewer than 20 persons regularly employed at the workplace (s.29(2)). The Act specifies the composition¹ and frequency of the meetings of a committee as well as its functions² (ss.30, 31, 35). A committee member is entitled to such time off from work as is necessary to attend meetings, to take any training prescribed by the regulations, and to carry out his/her functions; such time is considered to be work time (s.30(6)). When a committee makes written recommendations, the employer must respond in writing within 21 days if requested to do so. Reasons must be given if

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recommendations are not accepted. When it is not reasonably possible to submit a response within 21 days, the employer must provide a reasonable explanation for the delay. If there is an unreasonable delay in providing a response, the chair or co-chairs of the committee must promptly report the matter to an occupational health and safety officer (s.34). There is protection against dismissal or discriminatory action for carrying out the functions of a committee member, through grievance arbitration under a collective agreement or by making a complaint to an occupational health and safety officer, with the burden of proof being on the employer (ss.45, 46).

Ontario

Occupational Health and Safety Act and Joint Health and Safety Committees - Exemption from Requirements

A health and safety committee is mandatory if: (1) 20 or more workers are regularly employed; (2) an order has been issued with respect to a workplace regarding a biological, chemical or physical agent; or (3) a regulation concerning designated substances applies to a workplace, other than a construction project at which fewer than 20 workers are regularly employed¹. Exclusions include: constructors at a project at which work is expected to last less than three months and any employer or workplace or class of employers or workplaces as prescribed by regulation (s.9(1), (2), (7)). Notwithstanding the above, committees may be required by the Minister of Labour (s.9(3)). There is also a requirement that at least one member of a committee representing the employer or constructor and at least one member representing workers be certified members (s.9(12)). Exceptions to this requirement include: a workplace at which fewer than 20 ordinary workers (who are not volunteer workers) are regularly employed; a construction project at which fewer than 50 such workers are regularly employed or where the project is expected to last less than three months (s.9(13), Reg.). The Act specifies the committees' functions and powers². An employer or constructor who receives written recommendations from a committee must respond in writing within 21 days and include a timetable for implementing those he/she agrees with and give reasons when he/she does not accept any other recommendations (s.9(18), (20), (21)). Certified members of a committee have powers which include a bilateral right, in dangerous circumstances, and a unilateral right, in more limited circumstances, to direct the employer or constructor to stop specified work or to stop the use of any part of a workplace or of any equipment, machine, device, article or thing. This does not apply to police officers, firefighters, employees of correctional institutions, or to those who provide health care services when the life, health or safety of other persons would be directly endangered (ss. 44 to 49). Time spent by committee members carrying out their duties or fulfilling the requirements for becoming certified (unless workers are paid by the Workplace Safety and Insurance Board during that time) is deemed to have been spent at work (s.9(35), (36)). General provisions protect workers against dismissal or disciplinary action if acting in accordance with the Act, through final and binding arbitration under a collective agreement or by making a complaint to the Ontario Labour Relations Board with the burden of proof being on the employer (s.50).

Prince Edward Island

Occupational Health and Safety Act
WCB means the Workers Compensation Board.

At every workplace where 20 or more persons are regularly employed, the employer must establish a joint occupational health and safety committee or may establish more than one¹ (s.25(1)). A similar requirement applies when 20 or more persons are regularly employed by one or more constructors at a construction project that is expected to last three months or more (s.25(2)). Where there are six to 19 persons regularly employed, the Director of Occupational Health and Safety may consult with the workers and employers at the workplace with respect to whether a committee should be formed and may order that a committee be established (s.25(3)). The functions of a committee are set out in the Act² (s.25(7)). Work time spent by a committee member attending meetings of the committee, taking prescribed training and carrying out his/her duties is deemed to have been spent at work (s.25(10), (11)). Every employer who receives written recommendations from a committee with a request to respond must do so, in writing, within 30 days. The employer must give reasons for any disagreement with any recommendations or,

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If it is not reasonably practicable to provide a response within that period, provide within that time a reasonable explanation for the delay indicating when the response will be coming, and provide the response as soon as it is available. When the committee does not consider that the explanation provided regarding a delay in responding to a request is reasonable in the circumstances, it must promptly report that fact to an occupational health and safety officer (s.27(1) to (3)). General provisions protect workers against discriminatory action, dismissal and penalties when acting in accordance with the Act; and there is a right to use the arbitration procedure under a collective agreement or to file a complaint with the WCB. In the latter case, if all the required steps to resolve the complaint have been exhausted, the WCB refers the complaint to an arbitrator it appoints (ss. 30 and 31).

Quebec

An Act respecting occupational health and safety and Regulation respecting health and safety committees; CSST means Commission de la santé et de la sécurité du travail (Occupational Health and Safety Commission).

A health and safety committee is established upon a written notice sent to the employer by a certified union or, if there is no union, by at least 10% of the workers or at least four of them if they are fewer than 40. A similar notice may be sent by the employer to the union or, if there is no union, to the workers as a whole¹. This applies to establishments with more than 20 workers, which belong to a category identified by regulation. The CSST may require a committee regardless of the number of workers. A committee must be formed on construction sites occupying at least 25 workers at any particular stage of the work (Construction Safety Code s.2.5.1). The functions of committees are outlined in the Act², and worker representatives on a committee are deemed to be at work while participating in its activities. There is protection against dismissal, discriminatory action or reprisals for performing the functions of a committee member in accordance with the legislation (ss. 68 to 86) and (construction: ss. 204 to 208 not in force), and the worker has the right to use the grievance procedure under a collective agreement or to submit a complaint to the CSST. The burden of proof is on the employer to establish another good and sufficient reason for taking the action. The CSST's decision is subject to review by the Commission des lésions professionnelles (Occupational Injury Commission) (ss. 227 and 228). The *Regulation respecting health and safety committees* describes the categories of establishments in which a committee may be established, and contains rules concerning their composition, the appointment of workers as members, how committees operate, and an annual report on their activities.

Saskatchewan

Occupational Health and Safety Act, 1993 and Occupational Health and Safety Regulations, 1996

An occupational health committee is mandatory at places of employment with ten or more workers¹ (s.15). A committee is also mandatory at a construction site at which 10 or more workers or self-employed persons work or are likely to work for more than 90 days (Regs. s. 38). Their duties are enumerated in the Act² (s.19). Time spent by committee members while participating in regular or special meetings is considered to be work time (Regs. s.48). Committee members are entitled to leave for a period or periods of not more than five working days per year for the purpose of attending occupational health and safety training programs, seminars or courses of instruction and such training is considered to be work time if conducted or provided by the Occupational Health and Safety Division or an approved training agency (Regs. s.46). An employer must provide written reasons to a committee for not resolving a problem or addressing a concern it has raised concerning the health, safety and welfare of workers. If the parties cannot resolve the problem or address the concern after written reasons have been provided, the committee, one of its members or the employer may refer the matter to an occupational health officer who may determine that there is no problem or concern, attempt to mediate an acceptable resolution of the matter or issue a notice of contravention under the Act (s. 21). There is protection against dismissal or discriminatory action, including loss of wages, for performing the functions of a committee member, and a worker has the right to refer the matter to an occupational health officer. In any prosecution or other proceeding under the Act, the burden of proof is on the

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employer (ss. 27 and 28).

Yukon Territory

Occupational Health and Safety Act

A health and safety committee is mandatory in a workplace where 20 or more workers are regularly employed for a period exceeding one month¹. Committees are not mandatory if the Chief Industrial Safety Officer or the Chief Mines Safety Officer is satisfied that a safety program in which the workers participate protects them as well or better than a committee (s.12(3)). Employers or constructors may be required, notwithstanding such a program, to establish and maintain one or more committees for a workplace (s.12(4)). Their functions and powers are set out in the Act² (s.12 (10)). Time spent by a committee member carrying out his/her functions is deemed to have been spent at work (s.12(14)). Committee co-chairs must be permitted to participate in a training course offered or designated by the Director of Occupational Health and Safety, which is considered to be time worked (s.14). There is a general prohibition against dismissing a worker or taking any disciplinary or discriminatory action against him/her for an action carried out in accordance with the Act (s.18).

NOTES

1. At least one half of the members of a health and safety committee must be persons representing workers in the workplace. In a majority of jurisdictions, the law specifies that the worker representatives on a committee must not exercise managerial functions (or be associated with management, in a number of jurisdictions).
2. Following are examples of joint health and safety committees' functions and powers found in two or more jurisdictions: to receive, consider and dispose of concerns and complaints relating to the safety and health of employees; to participate in inspections and accident investigations, and identify situations which may be unhealthy or unsafe; to make recommendations to the employer and workers for the improvement of health and safety at work; to establish and promote health and safety educational programs for workers; to obtain from an employer such information as the committee considers necessary to identify existing or potential hazards; and to have full access to all government or employer reports relating to the safety and health of the employees in the workplace.

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