

## CANADIAN LEGISLATION RELATING TO SAFETY AND HEALTH REPRESENTATIVES

### Jurisdiction/Legislation

### Health and Safety Representatives

#### **Federal**

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

The appointment of a health and safety representative is mandatory in each workplace at which fewer than 20 employees are normally employed or for which an employer is not required to establish a workplace health and safety committee<sup>1</sup>(s.136(1)). The legislation sets out his/her functions and powers, which are similar to many of those of workplace committees (ss.136(5)). An employer must respond in writing to recommendations made by a health and safety representative within 30 days after receiving them, indicating what, if any, action will be taken and when it will be taken (s. 125(1)). A health and safety representative 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 the collective agreement or, if there is no such agreement, in accordance with the employer's policy (s. 136(9)). 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, 147). The selection of representatives, the determination of the term of office and the filling of a vacancy are regulated by the *Safety and Health Committees and Representatives Regulations* (Regs. ss.11 to 14).

#### **Alberta**

*Occupational Health and Safety Act*

No legislative requirement

#### **British Columbia**

*Workers Compensation Act (WCA) and Occupational Health and Safety Regulation*

A health and safety representative is mandatory in workplaces with more than 9 but fewer than 20 regular employees and in those for which a representative is required by the Board<sup>1</sup>. To the extent practicable, a representative has the same duties and functions as a joint health and safety committee, including participation in regular and special inspections. Time spent by a representative carrying out his/her functions is deemed to have been spent at work. When a representative 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, the representative 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 representative 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.139, 140, 182; Reg. s.3.8). There is a general prohibition against suspension, dismissal 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).

Board means the Workers' Compensation Board.

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## Safety and Health Representatives

### **Manitoba**

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

A safety and health representative is mandatory at a workplace, other than a construction project, where a safety and health committee is not required but where ten or more workers are regularly employed<sup>1</sup>. A representative is also mandatory at a construction project and at any other workplace(s) the Minister of Labour may designate (s.41(1)). A worker safety and health representative performs the same duties as set out for safety and health committees (s.41(5)). Except on construction projects, a representative 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 safety and health representative identifying anything that may pose a danger to the safety or health of any person, must respond in writing to the representative 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 a safety and health representative carrying out his/her duties is to be remunerated as time worked (s.41 (6)). Workers are protected against dismissal or discriminatory action for performing duties or exercising rights as a representative, 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 Workplace Safety and Health Committee Regulation applies to the representatives with the appropriate modifications (Regs. s.12).

### **New Brunswick**

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

If there are no fewer than five and no more than nineteen regularly employed workers, the employer may provide for a health and safety representative in the safety policy established for the place of employment. However, where the nature of employment presents a high risk to the health and safety of employees or where the accident record is higher than normal, a representative is mandatory if the WHSCC demands it<sup>1</sup> (s.17). The duties and powers of a health and safety representative are similar to those of a health and safety committee (s.18). 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**<sup>2</sup>

*Occupational Health and Safety Act and Occupational Health and Safety Regulations;*

WHSCC means the

Where less than 10 workers are employed at a workplace, the employer must ensure that a worker is designated as the worker health and safety representative<sup>1</sup> (s. 41(1), 42). A worker health and safety representative has the same duties as those of a committee, where that is reasonably practicable (s.44). The employer must provide and pay for the training of the representative. The training must meet the requirements the WHSCC may set. Representatives must participate in training provided under these provisions, and must be compensated as if that training were regular work (s.41(2) to (5)). The employer must respond in writing within 30 days to a recommendation of a representative 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 representative 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

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## Safety and Health Representatives

Workplace Health, Safety and Compensation Commission.

other benefits, for being a representative, and there is a right to use any grievance procedure provided in a collective agreement with respect to discrimination or to file a complaint with the Labour Relations Board; in either case, the burden of proof is on the employer (ss.49 to 52).

### **Northwest Territories and Nunavut**

*Safety Act, Mine Health and Safety Act*

No legislative requirement

### **Nova Scotia**

*Occupational Health and Safety Act*

At least one health and safety representative is mandatory where there is no requirement for a joint health and safety committee and there are five or more employees at a workplace or construction project<sup>1</sup> (s.33(1) and (2)). If there are fewer than five employees at a workplace, the Executive Director of Occupational Health and Safety may order that a representative be selected by the employees<sup>1</sup> (s.33(3)). Time spent carrying out the functions of a representative is deemed to be work time (s.33(5)). Representatives have most of the functions of health and safety committees (ss. 33(6), 35). When a representative 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 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 representative 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 representative, 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*

Where no health and safety committee is required, the employer or constructor must ensure the selection by the workers of at least one health and safety representative<sup>1</sup> from their ranks if the number of workers regularly present at the workplace or construction project exceeds five (s.8(1)). Where there are less than five workers and where no health and safety committee is required, the Minister of Labour may order the employer or constructor to cause the workers to select one or more health and safety representatives<sup>1</sup> (s.8(2)). Representatives have many of the functions of health and safety committees. An employer or a constructor who receives written recommendations from a representative 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.8 (6) to (13)). Time spent by a representative carrying out his/her functions is deemed to have been spent at work (s.8(15)). 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).

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### **Prince Edward Island**

#### *Occupational Health and Safety Act*

WCB means the Workers Compensation Board.

At a workplace or construction project where no joint occupational health and safety committee is required and the number of workers employed is five or more, the employer or constructor must require the workers to select at least one health and safety representative from among the workers at the workplace or project<sup>1</sup>. The Director of Occupational Health and Safety may order the selection of such a representative where there are fewer than five workers at a workplace (s.26(1) to (3)). A health and safety representative has most of the duties of a committee (s.26(6)). Work time spent by a representative to attend meetings, to take prescribed training and to carry out his/her duties is deemed to have been spent at work (s.26 (4), (5)). Every employer who receives written recommendations from a representative 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, 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 representative does not consider that the explanation provided regarding a delay in responding to a request is reasonable in the circumstances, he/she 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 Safety Representatives in Establishments*

#### *Regulation;*

CSST means Commission de la santé et de la sécurité du travail (Occupational Health and Safety Commission).

Safety representatives are mandatory where a health and safety committee exists; they are members ex officio of the committee. Irrespective of the number of workers in an establishment that belongs to a category in which a committee may be established in accordance with the regulations, one or more safety representatives are designated 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<sup>1</sup>. On construction sites, a representative association of employees may designate one or more safety representatives where a worker on the site is a member of an affiliated labour organization<sup>1</sup>. Their functions include inspecting workplaces, identifying sources of danger to workers, making recommendations to the health and safety committee, or to the workers or their union, or to the employer, and assisting workers in the exercised of their rights. They are deemed to be at work when exercising their functions. They may, without loss of pay, take time off work, to participate in CSST approved training programs. Registration, travel and accommodation expenses are borne by the CSST. There is protection against dismissal, discriminatory action or reprisals when safety representatives perform their functions in accordance with the legislation (ss. 31 and 87 to 97) and (construction: ss. 209 to 215 not in force). 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 Safety Representatives in Establishments Regulation sets out, among other things, the minimum amount of time representatives may devote to some of their functions and the instruments or apparatus they need in exercising their duties.

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### **Saskatchewan**

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

An occupational health and safety representative is mandatory at places of employment prescribed by regulations, where there are more than four but fewer than ten workers<sup>1</sup> (s.16) (Regs. s.45). Representatives have many of the duties of occupational health committees (s.20). Time spent by representatives while participating in regular or special meetings is deemed to be work time (Regs. s.48). They 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 representative for not resolving a problem or addressing a concern the latter 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 representative 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 representative, 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 employer (ss. 27 and 28).

### **Yukon Territory**

*Occupational Health and Safety Act*

One or more health and safety representatives must be selected if no health and safety committee is required and the number of workers regularly employed for a period exceeding one month is five or more for workplaces classed as most hazardous, ten or more for those classed in the next category as far as degree of hazard is concerned, and 15 or more for those that are less hazardous<sup>1</sup> (s.13(1)). Representatives may be ordered by the Chief Industrial Safety Officer or the Chief Mines Safety Officer in workplaces where there is no committee and no representative (s.13(2)). If there is a health and safety committee, at least one health and safety representative must be selected from the workers who are members of the committee (s.12(8)). Health and safety representatives have functions relating to inspections, testing and the investigation of serious accidents or injuries (ss. 12, 13). Time spent by them carrying out their functions is deemed to have been spent at work (s.13(10)). A representative may appeal to the Chief Industrial Safety Officer or the Chief Mines Safety Officer to resolve any differences of opinion with the employer concerning health and safety matters and their decision is final (s.13(12)). Representatives 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 spent at work (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. Safety representatives must be selected by the employees or, in a majority of jurisdictions, by the trade union representing them, if any. In many jurisdictions, the law specifies that the representatives must be selected from among the employees in the workplace, and that they must not exercise managerial functions (or, in a number of jurisdictions, be associated with management).
2. In Newfoundland and Labrador, where there are fewer than six workers at a workplace and the designation of a worker health and safety representative is impracticable, the employer may appoint a workplace health and safety designate to monitor the health, safety and welfare of workers employed at the workplace. The designate may be either a worker connected with the management of the workplace or, if the designation of such a worker is not practicable, the employer. The designated person has the same duties as a worker health and safety representative. Where the designate is the employer, he/she must consult with the workers while performing his/her duties. The employer must provide and pay for training for the designate. The training must meet any requirements set by the Workplace Health, Safety and Compensation Commission. The employer must compensate a worker who participates in such training as if this was regular work.

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In spite of what is mentioned above, the assistant deputy minister or an occupational health and safety officer must order that a worker health and safety representative be designated under the Act if he/she is of the opinion that a workplace health and safety designate cannot adequately monitor the health, safety and welfare of workers employed at a workplace. Such an order may be appealed to the assistant deputy minister or the Labour Relations Board, as the case may be, under the Act.

Management has the same obligations vis-à-vis a workplace health and safety designate who is not the employer that it has with respect to an occupational health and safety committee or a worker health and safety representative to consult and co-operate about occupational health and safety matters, including workplace inspections, to respond in writing to their recommendations within 30 days and to provide periodic written updates on the implementation of the recommendations that have been accepted.

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February 10, 2006