
Fact Sheet

Ministry of Labour
www.labour.gov.on.ca/

Information for Farming Operations: Enforcement of the Occupational Health and Safety Act – When Self Compliance Fails

About the Occupational Health and Safety Act

Purpose of the Occupational Health and Safety Act

The purpose of the Occupational Health and Safety Act (OHSA) is to protect workers against health and safety hazards on the job. As of June 30, 2006, it applies, with some limitations and exceptions, to all farming operations that have paid workers. The OHSA is administered and enforced by the Ontario Ministry of Labour (MOL).

Internal Responsibility System

The OHSA is based on an Internal Responsibility System (IRS) – a concept based on the principle that the workplace parties themselves are in the best position to identify health and safety problems and take proactive measures to ensure a safe and healthy workplace and compliance with the OHSA and associated regulations. There are several provisions in the OHSA aimed at fostering the IRS. These include but are not limited to:

- Responsibilities and duties of employers, supervisors and workers.¹
- The requirement for employers that regularly employ more than five employees to have a health and safety policy and program.
- The requirements concerning worker health and safety representatives and joint health and safety committees.²
- The three basic rights of all workers – The Right to Participate; The Right to Know; The Right to Refuse Unsafe Work.³

¹ The OHSA imposes duties on all those who have any degree of control over the workplace, the materials and equipment in the workplace and the direction of the work force. Part III of the OHSA outlines these duties. These duties and responsibilities range from the employer duty to provide information, instruction and supervision to workers to the worker duty to work safely and in accordance with the legislation.

² More details on the requirements for Health and Safety Reps and Joint Health and Safety Committees can be found in the *Guide for Health and Safety Representatives and Joint Health and Safety Committees on Farming Operations* and in the *Regulation for Farming Operations*.

³ These rights are detailed in section 43 of the OHSA.

Resources Available

There are numerous resources available to help a farm operator and farm workers understand their responsibilities under the OHSA. These include, but are not limited to:

Ontario Ministry of Labour <http://www.labour.gov.on.ca/english/about/index.html>

Ontario Ministry of Labour Publications

- a) A Guide for Health and Safety Representatives and Joint Health and Safety Committees on Farming Operations
http://www.labour.gov.on.ca/english/hs/farming/jhsc_0.html
- b) Pocket Extracts for Farming Operations
<http://www.labour.gov.on.ca/english/hs/farming/extracts.html>
- c) Protection for Workers on Farming Operations from Reprisals from Employers
<http://www.labour.gov.on.ca/english/hs/farming/reprisals.html>
- d) Occupational Health and Safety Policy and Programs for Farming Operations
<http://www.labour.gov.on.ca/english/hs/farming/policy.html>
- e) Requirement to Report an Incident on a Farming Operation
<http://www.labour.gov.on.ca/english/hs/farming/incident.html>
- f) Fact sheet 2006-01 – “Role of the Ontario Ministry of Labour Health and Safety Inspector”.

Other Health and Safety Prevention and Education partners also have information that may help.

Prevention and Education Material from Other Organizations:

- a) Farm Safety Association <http://www.farmsafety.ca>
- b) Workplace Safety and Insurance Board
<http://www.wsib.on.ca/wsib/wsibsite.nsf/public/homepage>
- c) Safe Workplace Associations <http://www.labour.gov.on.ca/english/hs/websites.html>
- d) Ontario Ministry of Agriculture and Food and Rural Affairs
<http://www.omafra.gov.on.ca/english/index.html>
- e) Canadian Centre for Occupational Health and Safety <http://www.ccohs.ca/>

Enforcement of the Occupational Health and Safety Act

The role of the Ministry of Labour Health and Safety Inspector is detailed in Fact Sheet 2006-01 "Role of the Ontario Ministry of Labour Health and Safety Inspector". A MOL Health and Safety Inspector will primarily visit a farming operation, as of June 30, 2006 to:

- (1) Inspect the workplace for compliance with the Occupational Health and Safety Act and/or
- (2) Investigate a critical injury⁴, fatality, complaint or work refusal.

Observed Violations and the Issuance of Orders

As detailed in Fact sheet 2006-01 "Role of the Ontario Ministry of Labour Health and Safety Inspector", the Inspector will provide the workplace parties with a written "Premise Project" report at the conclusion of his/her visit. An employer is required to post this report in a conspicuous location at the workplace. Where an Inspector observes a contravention, an order (not a recommendation) may be issued in the written report. Orders may be issued for each observed contravention. Orders are issued under the section of a regulation or the OHS Act that has been contravened, but may be issued under the general duty sections⁵ of the Occupational Health and Safety Act. There are no monetary penalties associated with orders.

Inspectors may issue three types of orders:

- (1) **Forthwith** (where compliance must be achieved before the Inspector leaves the premises – an example of when a forthwith order might be issued includes an order for the employer to post a copy of the OHS Act at the workplace),
- (2) **Time-Based** (where the Inspector is satisfied that there is no immediate health and safety hazard, the workplace will be given, in consultation with the workplace parties, a deadline date by which to comply with the order – an example of when a time-based order might be issued includes an order for the employer to provide information and instruction to a worker on the safe use of a certain piece of equipment.)
- (3) **Stop Use/Stop Work** (the MOL Inspector may issue an order to correct the contravention and may additionally write a Stop Use/Stop Work order requiring the specific work or specific equipment to be stopped. If a Stop Use/Stop Work order is issued, the work may only resume once the Inspector is satisfied that the contravention has been corrected. An example of when a Stop Use/Stop Work order might be issued includes a situation where an Inspector observes a contravention and has identified immediate hazards to workers, s/he may consult with the workplace parties to determine if immediate and/or interim measures are possible to protect the worker(s). Where immediate and/or interim measures are not possible or adequate the MOL may issue a Stop Use/Stop Work order in addition to an order to correct the contravention.)

⁴ Critical injury means an injury of serious nature that places life in jeopardy; produces unconsciousness; results in substantial loss of blood; involves the fracture of a leg or arm but not a finger or toe; involves the amputation of a leg, arm, hand or foot but not a finger or toe; consists of burns to a major portion of the body; or causes the loss of sight in an eye. R.R.O. 1990 Regulation 834

⁵ For example, section 25(2)(h) of the Act states "an employer shall take every precaution reasonable in the circumstances for the protection of a worker."

Appealing an Order

Should any of the workplace parties disagree with an Inspector's order or decision not to issue an order, they may exercise their right to appeal. Appeals are processed and administered by the Ontario Labour Relations Board (OLRB) and are heard by the Vice Chairs of the OLRB. Appeals must be made within 30 days of the making of the order or Inspector's decision. The OLRB has rules of procedure governing the filing of appeals. These can be obtained from <http://www.olrb.gov.on.ca/english/applica.htm>. The order remains in effect until a decision is made on the request for a suspension of the order or on the order itself.

Complying with an Order

Attached to the MOL Inspector's report will be a "Notice of Compliance" form. The workplaces parties are required to use this form (or some other written notification) to indicate compliance with each order and return it to the MOL by the compliance deadline(s). If there are multiple orders with multiple compliance dates, the form will need to be submitted more than once. Each order stays in effect until the Inspector is satisfied that it has been met. The Inspector may contact or re-visit the workplace to verify compliance should s/he have concerns.

Prompt and effective response to MOL orders is the best way to return a workplace to compliance. Workplace parties are encouraged to contact the MOL Inspector should they anticipate difficulties in meeting compliance deadlines.

Consequence of Failing to Comply with an Order

Where an order has been previously issued and non-compliance is noted on a subsequent visit, the Inspector may issue a written "Notice to the Employer" detailing the non-compliance in accordance with section 66 of the OHS Act. The Inspector may also consider:

- Issuing a Stop Work/Stop Use order where there is danger or hazard to the worker(s).
- Initiating prosecution for non-compliance.

Prosecution Considerations

MOL Inspectors may initiate prosecution where there has been a contravention that is related to a fatal, critical or other injury to a worker. Other circumstances where prosecution may be considered include, but are not limited to:

- Failure to comply with an order;
- Obstruction of an Inspector; (i.e. knowingly providing false information to an Inspector, threatening an Inspector, barring entry in or upon any workplace, refusing to provide assistance or information to an Inspector);

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- Where a Stop Work order has been issued;
 - Repeat Offenders (Orders issued for same contravention to the same offender);
 - Violations that could result in critical injury or death; and
 - Seriousness of the violation/contravention.

Prosecution may be considered against any workplace party who had responsibility for an accident or contravention. Any workplace party including employers, supervisors and workers may be individually responsible or may share responsibility.

The purpose of prosecution is deterrence – specific deterrence for the offender and general deterrence for other potential offenders.

Summary

Starting June 30, 2006, farming operations with paid workers will be required to comply with the Occupational Health and Safety Act and specified regulations. The OHS Act is grounded in the concept of the Internal Responsibility System (IRS) – a concept recognizing that workplace parties themselves are best able to keep their workers safe and healthy. As a result, the OHS Act provides specific rights and responsibilities for workers, supervisors and employers regarding worker safety and health. There are numerous resources available to help employers, supervisors and workers understand these rights and responsibilities and to develop and maintain an effective IRS. The responsibility for worker health and safety lies with workplace parties.

The Ministry of Labour Inspector enforces the OHS Act and associated regulations. S/he may visit a farming operation to conduct an inspection or investigate a fatal or critical injury, health and safety complaint or work refusal. Where contraventions are found, orders may be issued. Prompt and effective response to MOL orders is the best way to return a workplace to compliance. Orders carry no monetary penalties.

Under certain circumstances, including when there has been a contravention that is related to a fatal critical or other injury to a worker, the MOL Inspector may initiate prosecution. The purpose is deterrence – specific for the offender and general for potential offenders.

This Fact Sheet is provided for your information and convenience only. It is not a legal document. For further information and the exact wording in the OHSA, please refer to the Occupational Health and Safety Act (OHSA) and regulations.