

Occupational Health and Safety Bulletin



Occupational Health and Safety Act Amended in 2012 - Highlights

Bill 6, the *Protection and Compliance Statutes Amendment Act*, received Royal Assent on December 10, 2012. The amendment act changes the *Occupational Health and Safety (OHS) Act* in six major ways. All changes are effective on that date except changes related to administrative penalties, which come into force upon proclamation.

- (1) *The Department can levy administrative penalties for OHS violations* – the *OHS Act* allows the department to issue administrative penalties for OHS violations, with a maximum administrative penalty of \$10,000 per contravention per day.
- (2) *Authority of OHS officers enhanced* – OHS officers now have the authority to request persons at a work site to identify themselves; and employers are required to identify their workers to the officers on request. Any persons interfering with an officer exercising his/her power under the Act is an offence under the Act.
- (3) *Prime contractor requirement clarified* – 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. The two employers and their workers do not have to be working at the site at the same time to meet the requirement.
- (4) *The duties of the OHS Council expanded to include hearing appeals to administrative penalties* – The OHS Council is the appeal body for hearing administrative penalty appeals. The new duty is an addition to their current duties of hearing appeals to OHS orders, permit suspensions and cancellations, and safety related disciplinary action complaints.

- (5) *The government can collect creative sentences owing to third parties as fines – Any outstanding amount of a creative sentence owing to a third party as ordered by the court to a person under the OHS Act is deemed to be a fine imposed on the person. The government can enforce payment of fines under the Provincial Offences Procedure Act.*
- (6) *Orders can now be serviced by electronic methods and on a person in apparent authority – Besides servicing OHS orders by personal service, the orders can be serviced by electronic methods (e.g. fax, email) in accordance with the regulation. Service on a person in apparent authority is acceptable service on an employer.*

The following is a brief summary of each of the amendments made.

(1) Administrative penalties allowed

What changed?

- Department can levy administrative penalties against persons for violations of occupational health and safety legislation (Act, regulations and code).
- Administrative penalties may apply to an employer, a worker, a contractor, a prime contractor and a supplier.
- The maximum amount of an administrative penalty is \$10,000 for a contravention; and if the contravention continues for more than one day, a maximum of \$10,000 for each day.
- Sections 40.3, 40(1) of the *OHS Act*.

Why was the change necessary?

- There was no middle ground in the enforcement spectrum – between issuance of an order to comply and prosecutions through the courts.
- The administrative penalties is developed as an additional tool to address circumstances of non-compliance. It is a compliance tool intended to encourage efforts to comply thereby reducing the risk of workplace injuries and illness.

How will the change affect employers and workers?

- There will be no impact on employers and workers who follow the workplace health and safety rules.
- Employers and workers who violate the occupation health and safety laws, especially repeat offenders, may be subject to a penalty assessed by the department.

How will the change improve workplace health and safety?

- By focussing on achieving OHS compliance by all parties, the administrative penalty system will enhance compliance with OHS legislation and improve health and safety in the workplace.

(2) Authority of OHS Officers enhanced

What changed?

- OHS officers now have the authority to request identity information of workers and employers at a work site.
- It is an offence for any person to interfere with an OHS officer exercising his/her power under the *OHS Act*.
- Sections 4.1, 40.4 of the *OHS Act*.

Why was the change necessary?

- The additional authority facilitates the ability of OHS officers to impose penalties and ensure compliance with OHS legislation.
- It creates a positive duty for persons on work sites to refrain from interfering with officers exercising their power.

How will the change affect employers and workers?

- Employers and workers will have to identify themselves on the request of an OHS officer. They must not interfere with an officer carrying out his/her duties.

How will the change improve workplace health and safety?

- The change will facilitate officers to enforce compliance with OHS legislation and the required health and safety rules of the workplace.

(3) Prime contractor requirement clarified

What changed?

- Every work site must have a prime contractor if there are two or more employers involved in work at the work site. The two employers and their workers do not need to be physically present at the same time to meet the requirement.
- Section 3(1) of the *OHS Act*.

Why was the change necessary?

- The change is designed to prevent avoidance of the prime contractor requirements through the skillful scheduling of work. The lack of a prime contractor can be problematic where scheduling has the employers at the site at different times but their activities may have a health and safety impact on each other.

How will the change affect employers and workers?

- If a prime contractor is required at a work site, the employer must work with the prime contractor to ensure health and safety of the workers.

How will the change improve workplace health and safety?

- There will be no confusion when a prime contractor is required. The prime contractor will ensure all employers follow the mandatory health and safety rules.

(4) OHS Council's duties expanded

What changed?

- OHS Council shall hear appeals of administrative penalties. The Act provides the appropriate tools and procedures needed to deal with this new category of appeals.
- Sections 7, 16 and 17 of the *OHS Act*.

Why was the change necessary?

- The government has decided that the OHS Council is the appeal body for the OHS administrative penalty system. The amendment is required to provide the Council with the authority.

How will the change affect employers and workers?

- Employers and workers may appeal an administrative penalty to the OHS Council within 30 days from the date that the notice of penalty was given.

How will the change improve workplace health and safety?

- The integrity of the OHS administrative penalty system is supported by the independent, tripartite appeal body. The credibility of the administrative penalty system would facilitate acceptance by employers and workers and promote addressing health and safety issues by focussing on and re-establishing compliance with regulatory requirements.

(5) Overdue creative sentences collected as fines

What changed?

- Where a person is convicted of an offence under the Act, the Court may make an order directing the person to make payments to third parties to support endeavours that improve OHS at work sites. Any outstanding amount of the payment owing to a third party as ordered by the Court is deemed to be a fine imposed on the person.
- Alberta Government can enforce the payment of fines under the *Provincial Offences Procedures Act*.
- Section 41.1 of the *OHS Act*.

Why was the change necessary?

- The government cannot collect outstanding payment orders on behalf of third parties but can collect fines which are debts to the Crown.

How will the change affect employers and workers?

- Persons convicted of offences under the OHS legislation must pay their fine, whether it is in the form of a fine or a creative sentence.

How will the change improve workplace health and safety?

- By enforcing the payment of fines, prosecutions will deter persons from violating workplace health and safety rules.

(6) Service of orders

What changed?

- OHS officers can service order by electronic methods (e.g. fax, email) in accordance with regulation (to be developed by the department). Service on a person in apparent authority is acceptable service on an employer.
- Section 44 of the *OHS Act*.

Why was the change necessary?

- The current service provisions are outdated and consume a large amount of administrative time trying to effect service on employers.

How will the change affect employers and workers?

- Employers and workers may receive OHS orders serviced by personal services, recorded mail or an electronic method. An employer may receive an OHS order through an individual present at the work site who has apparent authority in respect to the work of the employer.

How will the change improve workplace health and safety?

- Effective and timely communications on corrective action required between an OHS officer and parties at a work site facilitate OHS compliance and reduce the risk of worker injury or illness.

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