



Alberta's Bill 30 Overhauls Workers' Rights under Occupational Health and Safety and Workers Compensation Legislation

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Introduction

On December 15, 2017, *Bill 30: An Act to Protect the Health and Well-being of Working Albertans [Bill 30]* received royal assent, ushering in extensive changes for both Alberta's *Occupational Health and Safety Act [OHS]* and the *Workers Compensation Act [WCA]*. *Bill 30* will come into force throughout 2018, with most of the major changes to the *OHS* and the *WCA* taking effect on June 1 and January 1, respectively.

The Alberta Government has indicated that the changes are designed to better protect workers, ensure workers have the same rights and protections as workers in other provinces and empower workers to participate in the health and safety of Alberta's workplaces. *Bill 30* comes on the heels of the recent update to the provincial labour and employment standards legislation which also had a primary focus on expanding workers' rights.

Bill 30 imposes a number of substantive and administrative obligations on employers, including a duty to ensure that workers are not subjected to workplace harassment, and an expanded duty to report workplace incidents. The changes will also increase the administrative and bureaucratic requirements of both regulatory regimes. For example, the *OHS* will require that employers establish, maintain and regularly consult health and safety committees in the workplace. The *WCA* will establish an independent body to help individuals navigate processes of the Workers Compensation Board (**WCB**). The province estimates the changes will cost the WCB an additional \$94 million per year.

Overview of the Occupational Health and Safety Act

The *OHS* sets minimum standards for workplace health and safety, and outlines the roles and responsibilities of employers and employees.

Once in force, *Bill 30* will substantially overhaul the *OHS*'s content and structure. The Alberta Government developed *Bill 30* following a comprehensive review of the OHS system completed in the fall of 2017—the first review since the *OHS* was enacted in 1976.

The *OHSA* enshrines 3 basic rights

The amended *OHSA* will ensure that all workers have the following basic rights:

- (1) ***The right to refuse unsafe work:*** Workers (i) may refuse unsafe work, (ii) will receive pay during an employer's related investigation, and (iii) will be safe from reprisals. Employers may not reassign the task in issue until it is no longer a danger.
- (2) ***The right to be informed:*** Employers must inform workers about potential work site hazards and how to eliminate or control them. Employers must also make safety information readily available.
- (3) ***The right to participate:*** Employers must involve workers in health and safety discussions.

Major substantive changes

Expanded roles and responsibilities of work site parties

- The amended *OHSA* expands the definition of “employer” and “worker”.
 - A worker now includes self-employed persons and persons engaged for no monetary compensation.
 - An employer now includes a person employed by an employer to oversee the health and safety of its workers.
- Under the amended legislation, parties with stated obligations have been expanded to include supervisors, service providers, owners, self-employed persons and temporary staffing agencies. Previously, only employers, workers, suppliers, contractors and prime contractors had stated obligations.
- The amended *OHSA* expands an employer’s duties. The employer must:
 - ensure the health and safety of its workers, other workers onsite, and members of the public in the vicinity of the worksite;
 - ensure its workers are aware of their duties and rights under the *OHSA*, and any health and safety issues arising from work at the worksite;
 - ensure that workers are trained to protect their health and safety before starting or changing their work;
 - ensure its workers are not subjected to and do not participate in workplace harassment or violence;
 - ensure that supervisors are competent to follow OHS requirements;
 - establish and consult with work site safety representatives or committees;

- resolve any workplace health and safety concern in a timely manner;
 - advise the prime contractor of the names of supervisors; and
 - make all health and safety information readily available to the worksite health and safety committee, health and safety representative, workers and the prime contractor.
- The amended *OHSA* also expands the obligations for prime contractors, including that of reporting unsafe or harmful worksite acts or conditions to the employer or supervisor. Prime contractors are now required on construction and oil and gas work sites, or a work site designated by a Director.

New obligations to prevent and respond to harassment and violence

- The *OHSA* will introduce express definitions for harassment and violence in the workplace, including definitions for sexual solicitations or advances. Employers and supervisors will have an express obligation to ensure that no workers are subjected to or participate in harassment or violence at a work site. Workers must refrain from causing or participating in workplace harassment or violence.

New requirements to provide workers with health and safety representation

- Employers must establish a joint work site health and safety committee when they employ 20 or more workers and expect work to last 90 or more days. The committee must meet at least quarterly. The employer must provide the committee members with compensation and training for their committee work.
- These committees will be responsible for:
 - inspecting the work site for hazards;
 - helping employers respond to health and safety concerns of workers;
 - helping resolve workers' refusals of unsafe work;
 - helping to develop health and safety policies and safe work procedures;
 - helping with new employee health and safety orientation; and
 - developing and promoting education and training programs.
- When an employer has between 5 and 19 workers and expects the work to last more than 90 days, the employer must have a health and safety representative who:
 - will perform the same duties as a health and safety committee; and
 - must meet with the employer regularly.

- If a committee or representative brings a health and safety matter to the attention of the employer and makes remedial recommendations, the employer must:
 - implement the recommendations and inform the committee or representative; or
 - develop a timeline for implementation and any interim control measures if the changes cannot be implemented within 30 days; and
 - provide reasons if it disagrees with the recommendations. An officer may settle any disputes.

New reporting requirements on employers for serious injuries and incidents

- Employers must now report any injuries where a worker is hospitalized (not just for hospital stays extending more than 2 days).
- The amended legislation outlines the kinds of incidents that employers must report which now includes incidents that *could* have caused serious injury, even if no injury occurred.

Compliance and enforcement

- The amended *OHS*A expands an officer's investigative powers at a work site, including the power to issue stop work orders and to interview workers not present at the time of an incident. When an officer determines that a stop work order is necessary, affected workers must receive their pay while the order is in effect.

Changes to the process for review and appeals of orders or decisions

- The amended *OHS*A overhauls the administrative process for appeals. Appeals of certain orders issued under the *OHS*A will first be subject to review by the Director of Inspection, including worker refusals to perform dangerous work.
- The Alberta Labour Relations Board will hear appeals of other matters, such as review decisions, discriminatory action complaints and administrative penalties.
- The amended *OHS*A expands the scope of courts to impose and oversee creative sentences. These include orders to impose safety training or for employers to pay for research programs or scholarships. Other fines and penalties remain unchanged.

Overview of the Workers Compensation Act

The *WCA* provides no fault benefits and supports a safe return to work, with premiums that are intended to remain sustainable and affordable for employers. The *Bill 30* amendments to the *WCA* arose from an independent panel's recommendations following a comprehensive review of the system completed in June 2017—the first review in over 15 years.

Major substantive changes

Changes to make the Workers' Compensation Board more accessible

- The amended *WCA* establishes the Fair Practices Office, an independent body to assist workers in navigating the WCB system.
- The WCB must now produce a Code of Rights and Conduct that sets out the rights of workers and employers in their interaction with the WCB.
- The amended *WCA* increases the time to appeal a decision to the Appeals Commission from 1 year to 2 years, allows for procedural flexibility and publication of decisions, and permits a single adjudicator to deal with some matters, rather than a full panel.
- A reviewing body may grant interim relief while a decision is under review and appeal.

Expanded worker benefits

- There will no longer cap maximum insurable earnings. Previously, any lost wages over \$98,700 were uncompensated.
- Coverage for psychological injuries (including Post Traumatic Stress Disorder) for all occupations.
- Benefits will be improved for (i) surviving spouses and children following a worker's death, and (ii) young workers.
- There will be expanded retirement benefits for injured workers.
- Workers will gain the power to select a physician to conduct a medical examination.

Return to work and duty to accommodate

- Employers will be obligated to offer work to employees who suffered injuries and illnesses in their workplaces, unless it would impose an undue hardship.
- When a worker is medically able to perform the essential duties of the worker's pre-accident employment, the employer must offer the previously held position or an alternate position at comparable earnings.

Occupational Disease and Injury Advisory Committee

- An Occupational Diseases and Injury Advisory Committee will be created to advise on diseases, injuries and conditions that are common within an industry. The Committee may direct the WCB to deem linkages between common injuries/illnesses and employment sectors.

Review Current Work Place Policies

The changes to the *OHSA* and *WCA* implemented by *Bill 30* will certainly require increased oversight by Occupational Health and Safety Officers. This may prove to be a burden to existing Occupational Health and Safety enforcement and compliance mechanisms in the short term; however, companies with robust health and safety policies should be able to adapt to these changes relatively easily. It is critical for all parties subject to the *OHSA* to undertake a review of their present policies and educational programs to ensure that their entire workforce is properly educated about the changes to rights and obligations.

This Bulletin is intended as general information at the time it was written and is not to be relied upon as legal advice. For further information please contact any member of our Occupational Health & Safety team.