

***Landscape Ontario
London Chapter***

February 8, 2016

Safe At Work Ontario
Enforcement > Compliance > Partnership >

Ministry of Labour

Disclaimer

1. The purpose of today's presentation is to assist the workplace parties in understanding their obligations under the Occupational Health and Safety Act (OHSA) and its regulations. It is not intended to replace the OHSA or the regulations, and reference should always be made to the official versions of the legislation.
2. It is the responsibility of the workplace parties to ensure compliance with the legislation and the presentation does not constitute legal advice. If you require assistance with respect to the interpretation of the legislation and its potential application in specific circumstances, please contact your legal counsel.
3. Ministry of Labour inspectors will apply and enforce the OHSA and its regulations based on the facts as they may find them in the workplace. This presentation does not affect their enforcement discretion in any way.

Overview

- The Occupational Health and Safety System.
- Safe At Work Ontario.
- MOL Overview.
- Occupational Health and Safety Act.
- Internal Responsibility System and the duties of the workplace parties.
- Inspector duties
- Noise Regulations
- WHMIS
- Working at Heights

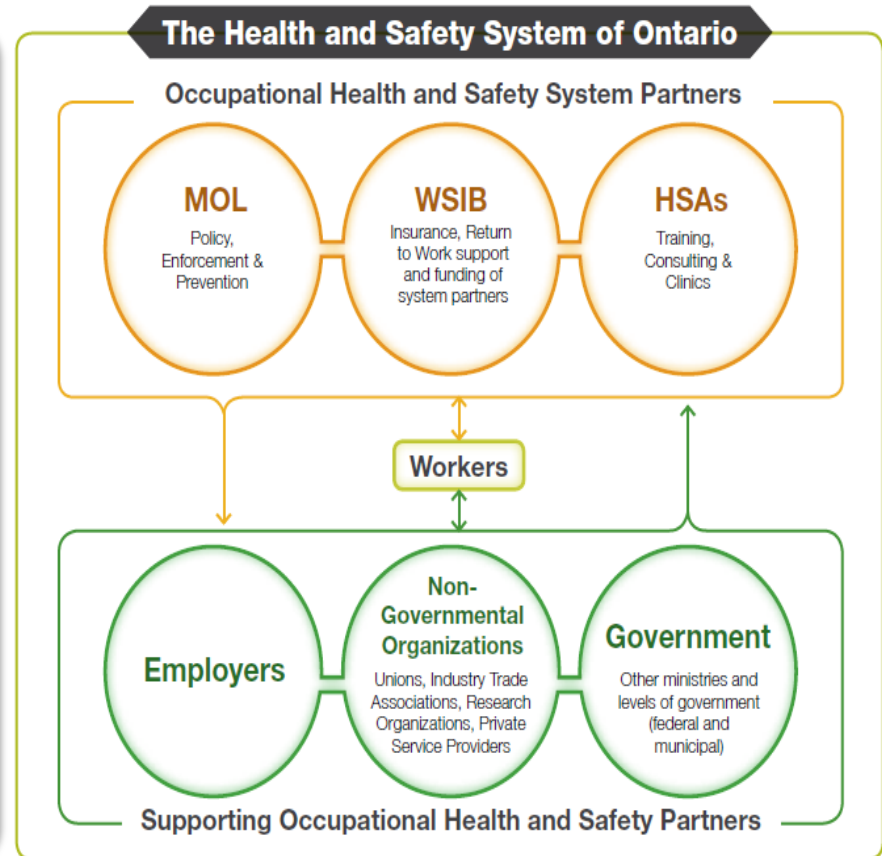
The Occupational Health and Safety System

System Partners:

- Ministry of Labour (MOL)
- Workplace Safety and Insurance Board (WSIB)
- Six Health and Safety Associations (HSAs)

Supporting Organizations:

- Conduct research
- Share best practices
- Participate in working groups
- Assist with outreach
- Raise awareness with high risk groups



Safe At Work Ontario: Overview

- *Safe At Work Ontario* (SAWO) is the occupational health and safety compliance strategy, designed to:
 - Improve the health and safety culture of workplaces.
 - Increase compliance leading to a reduction in workplace injuries and illnesses.
 - Lessen the burden on the health care system.
 - Avoid costs for employers and the Workplace Safety and Insurance Board (WSIB).
 - Provide a level playing field for compliant companies.
 - Ensure the inspectors are at the right workplace at the right time with the right tools.
- Cornerstones:
 - Focused inspections aligned with prevention interventions.
 - Transparent enforcement.
 - Education and support to businesses for compliance and injury prevention.
 - System partnership.
 - Sustained compliance through the Internal Responsibility System.
 - Continuous evaluation and improvement of the strategy.

Occupational Health and Safety Act

- The main purpose of the OHS Act is to protect worker health and safety.
- It applies to all workplaces in Ontario except federally regulated workplaces (e.g. banks, post offices, etc.) and work in the private home, carried out by an owner/occupant or servant of an owner/occupant.

Key Features of the OHSA

- Sets out the basic duties of employers, constructors, supervisors.
- Sets out basic duties and rights of workers.
- Sets out requirements to address workplace violence and harassment.
- Establishes MOL's mandate to prevent occupational injuries and diseases.
- Prohibits reprisals by employers.
- Provides for enforcement by inspectors.
- Establishes offences and penalties.
- Provides authority to make regulations (which set out in detail how the general duties in the OHSA are to be carried out).

The Internal Responsibility System

- The underlying philosophy of the OHSA is known as the Internal Responsibility System (IRS).
- IRS recognizes that the workplace parties are in the best position to identify and resolve health and safety issues.
- Ideally, the internal responsibility system involves everyone at the workplace, including employers, supervisors, workers, etc.
- The joint health and safety committee, or, in smaller workplaces, the health and safety representative, has a role to play by monitoring the IRS.

The Internal Responsibility System (cont'd)

- Several provisions of the OHSA are aimed at fostering the IRS, including:
 - The requirement for employers to have a health and safety policy and program.
 - The direct responsibility that employers, supervisors, workers and officers of a corporation have for health and safety.
- As of 2014, the employer is required to provide mandatory health and safety awareness training for every provincially regulated worker and supervisor.
- In 2014, the definition of worker in the OHSA was expanded to cover unpaid co-op students, certain other learners and trainees participating in a work placement in Ontario.

Duties of Employers

- The OHSA places specific duties on those who have any degree of control over the workplace – such as employers, supervisors, workers, constructors, owners and directors of corporations.
- Key Duties of Employers:
 - Take every precaution reasonable in the circumstances for the protection of workers.
 - Provide, where prescribed by regulation, equipment, materials and protective devices.
 - Maintain equipment, materials and protective devices.
 - Ensure proper use of equipment, materials and protective devices.
 - Ensure prescribed measures and procedures are carried out.
 - Provide information, instruction and supervision to workers.
 - Acquaint workers and supervisors with hazards in workplace.
 - Notify MOL of workplace fatalities, critical injuries and occupational illnesses.
 - Co-operate with the joint health and safety committee or worker health and safety representative and respond to recommendations.
 - Develop occupational health and safety policy and program (where 6 or more workers).
 - Develop a policy and program respecting workplace violence and harassment.

Duties of Supervisors

- Key Duties of Supervisors:
 - Ensure that a worker works in compliance with the OHS Act and regulations.
 - Ensure that any equipment, protective device or clothing required by the employer is used or worn by the worker.
 - Advise a worker of any potential or actual health or safety dangers known to the supervisor.
 - Where so prescribed, provide a worker with written instructions about the measures and procedures to be taken for the worker's protection.
 - Take every precaution reasonable in the circumstances for the protection of workers.

Duties of Workers

- Key Duties of Workers:
 - Work in compliance with the OHSA and regulations.
 - Use required equipment, protective devices or clothing.
 - Report hazards and contraventions of the OHSA or regulations to supervisor or employer.
 - Operate equipment and work in a safe manner so that no worker is endangered.
 - Not engage in pranks, contests, rough conduct.
- Key Rights of Workers:
 - Right to Participate in decisions about health & safety.
 - Right to Know about workplace hazards.
 - Right to Refuse unsafe work.

Powers of Inspectors

- MOL inspectors have broad powers to:
 - Enter any workplace without appointment and inspect for compliance with OHS and its regulations.
 - Handle or use any equipment/machinery; take away samples.
 - Interview workplace parties.
 - Look at documents, records, take photographs.
 - Require expert testing of equipment, workplace environment and production of reports.
 - Issue orders (e.g., immediate or time-based compliance; stop-work) and use other enforcement tools (i.e. Part I tickets, Part I summons, Part III prosecution).
- Inspectors investigate complaints, critical injuries, fatalities, reports of occupational illness and work refusals.
- Decisions of inspectors can be appealed to the Ontario Labour Relations Board.

What the inspector may look for

- Take every precaution reasonable in the circumstances for the protection of a worker
- Posting requirements (Act, posters, reports)
- Administrative requirements JHSC/Health & Safety representative
- Awareness and specific training (equipment, WHMIS, personal protective equipment)
- Maintaining equipment in good condition (chain saws, lawn mowers, trimmers, chippers, radial saws)
- Equipment guarding.
- Working at height (ladders, aerial devices, booms, rigging)
- Traffic and pedestrian control (mobile equipment)
- MSD
- Violence in the workplace (program and policy)

Types of Workplace Visits

Inspections:

- Workplace inspections are proactive visits by an Inspector to review compliance with the OHS Act and its regulations.
- Workplaces may be identified for proactive inspection by:
 - Their history of injuries and fatalities
 - Inherent hazards to their working environment

Investigations:

- Investigations are reactive visits to a workplace in most cases because of a complaint, work refusal, injury, or fatality.

Consultations:

- Consultation may occur before an actual workplace inspection.
- An Inspector may discuss with the employer and/or Joint Health and Safety member the purpose of their visit and may request information for the workplace parties to prepare for their next visit.

Proactive Work

- MOL regularly undertakes the following activities to target workplaces for inspection:
 - **Provincial blitzes** identify workplaces for inspection based on hazards inherent to the operation of the business. Blitzes are limited in duration (1 to 4 months) and raise awareness of these hazards so that the workplace parties can ensure that they are complying with the OHS Act and Regulations.
 - **Provincial initiatives** identify workplaces for inspection based on hazards inherent to the operation of the business, however, enforcement initiatives may also focus on a particular sector or a type of workplace, for example, new or small businesses. Provincial initiatives may run for an entire year or more to allow for extended outreach to these workplaces.

Proactive Work (cont'd)

- **Regional Initiatives** address Ontario's regional differences in workplaces. Each region leads a number of regional initiatives to focus on workplace hazards that are commonly found in their geographical area.
- For more information on the Ministry of Labour's Inspection Blitzes and Initiatives please visit:
<http://www.labour.gov.on.ca/english/resources/blitzschedule.php>

Industrial Enforcement Initiatives 2015/2016

Initiative #1: New Small Business Registrations and Internal Responsibility System (IRS) Initiative

- Proactive inspections of small businesses (with less than 50 workers) that are registered with the WSIB and have not been previously registered or inspected by the ministry. Focused review of the IRS/administrative requirements of the OHS Act and a physical inspection of the entire workplace.
- April 2015 – March 2016

Industrial Inspection Blitzes 2015/2016

Blitz Topic #1: New and Young Worker

- There are two focus groups in this blitz. The first group is the new young worker 15-24 and the second group is the new older worker, older than 25 that has been on the job for less than 6 months or reassigned to a new job.
- May - August 2015

Blitz Topic #2: Material Handling

- Inspectors will conduct an enforcement focus on lifting devices and manual material handling. This blitz will run during Musculoskeletal Disorder prevention month - October in support of the Integrated System Strategy with MOL Prevention.
- September 14 - October 23, 2015

Industrial Inspection Blitzes 2015/2016

Blitz Topic #3: Safe Operation of Machinery

- Inspectors will focus on hazards associated with the operation of machines and address machine guarding and electrical hazards.
- January 18 - February 26, 2016

What many young people think about health and safety at work, according to surveys:

- “I’ll do almost anything my employer asks me to.”
- “I assume the equipment and chemicals I work with are safe.”
- “I don’t know much about health and safety rights and responsibilities.”
- “I don’t want to ask too many questions. I may lose my job.”
- “Protective equipment isn’t cool. I won’t wear it unless someone makes me.”
- “I don’t want my boss to think I complain too much about hazards.”
- “It’s not an injury unless I can’t do my job anymore.”

Noise Protection Proposal

The new regulation that would set out noise protection requirements for all workplaces covered by the OHSA and would come into force on July 1st 2016 and apply to all sectors.

- MOL consulted on a proposal to:
 - set an exposure limit for noise (i.e., 85 dBA, $L_{ex,8}$ – based on an 8 hour time-weighted average exposure).
 - require employers to take all reasonable measures necessary in the circumstances to protect workers from exposure to hazardous noise levels. Such measures could include the provision of engineering controls (e.g. installation of sound barriers) and use of work practices (e.g. reduction in time spent working while exposed to noise).
 - allow the use of hearing protection under certain conditions; for example, in emergencies; where engineering controls breakdown or do not exist; or, where controls are not feasible because of the duration or frequency of exposure or the nature of a process, operation or type of work

Noise Protection Proposal, cont.

The new regulation would also include:

- A new definition of “attenuation”
- A requirement to post, where practicable, a clearly visible warning sign at every approach to an area in the workplace where the sound level regularly exceeds 85 dBA.
- A requirement for employers who provide a hearing protection device to train workers in its care and use.
- Factors to consider when selecting hearing protection (e.g. attenuation provided by the device, manufacturer’s information re use and limitations) and
- A requirement that hearing protection must be used and cared for in accordance with manufacturer’s instructions.

WHMIS 2015 – Implementing GHS

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- April 2, 2015 – proposed amendments to the OHS Act were introduced to implement WHMIS 2015.
 - Amendments are consequential to changes to federal legislation that came into force last February.
 - OHS Act changes are part of the *Strengthening and Improving Government Act* (Bill 85) – in Second Reading.
 - Proposed amendments to the WHMIS Regulation would follow passage of OHS Act amendments.
 - The MOL's website (<http://www.labour.gov.on.ca/english/hs/topics/whmis.php>) includes the latest information on WHMIS 2015, including FAQs and a link to Canada's National WHMIS Portal.

Working at Heights

As of April 1, 2015, employers must ensure that certain workers complete a working at heights training program that has been approved by the Chief Prevention Officer and delivered by an approved training provider before they can work at heights.

The training requirement is for **workers on construction projects** who use any of the following methods of fall protection:

- travel restraint systems
- fall restricting systems
- fall arrest systems
- safety nets
- work belts or safety belts

Working at Heights

Only Landscapers working on a construction project would be required to get the approved working at heights training

Under Section 25 (2) (a) the employer shall provide information, instruction, and supervision to a worker to protect the health and safety of a worker.

Under the Construction Regulations Section 26.2 a worker who may use a fall protection system shall trained in its use.

There is a two-year transition period for workers who, prior to April 1, 2015, met the fall protection training requirements set out in subsection 26.2(1) of the Construction Projects Regulation. These workers will have until April 1, 2017 to complete an approved working at heights training program.

Yard versus yard.

- Depending on the work location and the scope of the work being done more than one regulation may have to be followed.
- At the yard or shop workers would typically fall under the Industrial Regulations.
- In a homeowner's yard workers will fall under the Industrial Regulations is cutting the grass or pruning the trees but would fall under the Construction Regulations is excavating the yard or installing services or utilities.
- If an existing structure is to be demolished before the new garden is created workers may have to follow the Asbestos Regulation during the demolition as well as the Construction Regulations.

New construction and commercial projects.

- At new residential projects or commercial projects workers are governed by the Construction Regulations.
 - (5) Form 1000s or Constructors or Employers Engaged in Construction Form
 - (6) NOPs
 - (13) Signs
 - (15) Supervisors
 - (17) Emergency procedures
 - (22) Hard hats
 - (23) Protective footwear
 - (24) Safety glasses
 - (26) Guardrails and Fall Arrest
 - (35) Clean-up

New construction and commercial projects.

- (36) Protruding hazards
- (52) Fire extinguishers
- (65) Fencing
- (67) Traffic plan
- (69.1) Traffic garments
- (70) Access
- (72) Maintenance of access
- (150) Cranes
- (181-195.3) Electrical
- (228) Locates
- (229-242) Excavations

What is “Due Diligence”?

- Due Diligence is taking every precaution reasonable in the circumstances to prevent injuries and accidents.
- Due Diligence is demonstrated by your actions before and event occurs, not after.
- Due Diligence is a very important legal defence in gathering the evidence to prove that a defendant has done everything reasonable to prevent an event from occurring.

What is “Due Diligence”?

Please Note:

- Due Diligence is determined on a case by case basis.
- This presentation cannot give you a formula to determine when a strong Due Diligence case has been built. However, there are many significant factors when looking at Due Diligence;

What is “Due Diligence”?

- Do you understand your H&S responsibilities?
- Do you have effective procedures in place to identify and control hazards?
- Have you integrated safety into all aspects of your work?
- Do you set objectives for H&S as you would for quality, production, sales, etc...?
- Have you explained H&S responsibilities to the workers and made sure they understand?
- Have workers been effectively trained in to work safely and use the proper PPE?
- Is there an effective hazard reporting system for workers to report hazardous conditions?

What is “Due Diligence”?

- Are all workplace parties held responsible for H&S?
- Is H&S a factor when acquiring new equipment or changing a process?
- Do you keep records of your H&S program activities and improvements?
- Do you keep up-to-date worker training records?
- Do you keep disciplinary action records for H&S violations?
- Do you review and update your H&S policy at least annually to ensure it is accurate and up-to-date?
- Do you perform and keep workplace inspection records?

Bill C-45 and the Criminal Code

- Bill C-45 is federal legislation that amended the Canadian Criminal Code and became law on March 31, 2004. The Bill established new legal duties for workplace health and safety, and imposed serious penalties for violations that result in injuries or death. The Bill provided new rules for attributing criminal liability to organizations, including corporations, their representatives and those who direct the work of others.
- New Sections of the Criminal Code
- Bill C-45 added Section 217.1 to the Criminal Code which reads:
 - "217.1 Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task."

Why was Bill C-45 created?

- Bill C-45 also added Sections 22.1 and 22.2 to the Criminal Code imposing criminal liability on organizations and its representatives for negligence (22.1) and other offences (22.2).
- Bill C-45, also known as the "Westray Bill", was created as a result of the 1992 Westray coal mining disaster in Nova Scotia where 26 miners were killed after methane gas ignited causing an explosion. Despite serious safety concerns raised by employees, union officials and government inspectors at the time, the company instituted few changes. Eventually, the disaster occurred.

Why was Bill C-45 created?

- After the accident the police and provincial government failed to secure a conviction against the company or three of its managers.
- A Royal Commission of Inquiry was established to investigate the disaster. In 1998, the Royal Commission made 74 recommendations. The findings of this commission (in particular recommendation 73) were the movement that led to Bill C-45.

Main provisions of Bill C-45

- Created rules for establishing criminal liability to organizations for the acts of their representatives.
- Establishes a legal duty for all persons "directing the work of others" to take reasonable steps to ensure the safety of workers and the public.
- Sets out the factors that courts must consider when sentencing an organization.
- Provides optional conditions of probation that a court may impose on an organization.

Convictions under Bill C-45

- On Jun 12, 2006 a landscape contractor was crushed to death when the backhoe his employer was driving failed to stop, pinning the employee to a wall. The investigation of the incident found that the 30 year old backhoe had not received any regular maintenance since the vehicle was purchased and that no formal inspection had been done in the previous five years. Upon further investigation it was discovered that the vehicle had no braking capacity. In September 2010, the employer was convicted of criminal negligence causing death and was given a two year conditional sentence to be served in the community.

Convictions under Bill C-45

- On April 19, 2004 near the city of Newmarket, Ontario a worker was killed after the ground around him collapsed while digging a ditch at a residential construction site. The construction site supervisor was charge under section 217.1 of the Criminal Code with one count of criminal negligence causing death. In March 2005, the charges of criminal negligence against the site supervisor were dropped in an apparent plea bargain which saw the supervisor agree to three of eight charges under the Ontario Occupational Health and Safety Act and a fine of \$50,000 with a 25% victim surcharge.

Convictions under Bill C-45

- Construction project manager Vadim Kazenelson has been sentenced to 3½ years in prison for his role in a scaffolding collapse at a Toronto apartment building that left four workers dead on Christmas Eve 2009.
- The Ontario Superior Court found Kazenelson, 40, guilty in June 2015 of four counts of criminal negligence causing death and one count of criminal negligence causing bodily harm.
- During sentencing on Monday, Judge Ian MacDonnell said he needed to impose a "significant term" on Kazenelson to make it clear to others that they have a "serious obligation" to ensure the safety of workers. He said Kazenelson was aware that five of his workers were not wearing safety harnesses, but still allowed them to board a swing stage 13 storeys high. It collapsed, causing the men to plummet to the ground.

Web Links

Occupational health and safety information on the Ministry of Labour and Workplace Safety and Prevention Services (WSPS) website

[Ontario.ca/healthandsafetyatwork](https://www.ontario.ca/healthandsafetyatwork)
[Workplace Safety & Prevention Services](https://www.ontario.ca/workplacesafetyandprevention)

Information about the Ministry of Labour's strategy, Safe at Work Ontario, for enforcing the Occupational Health and Safety Act

[Ontario.ca/SafeAtWorkOntario](https://www.ontario.ca/safeatworkontario)

Employment standards information on the Ministry of Labour website

[Ontario.ca/EmploymentStandards](https://www.ontario.ca/employmentstandards)

We Are Here to Help

•Ministry of Labour Health & Safety Contact Centre

- Toll-free, 1-877-202-0008
Fax, 905-577-1316.
- Call any time to report critical injuries, fatalities or work refusals.
- Call 8:30 a.m. – 5:00 p.m.,
Monday – Friday, for general inquiries about workplace health and safety.
- In an emergency, always call 911.

Employment Standards Information Centre

- GTA: 416-326-7160
Canada-wide: 1-800-531-5551
TTY: 1-866-567-8893.

Need other languages?

- Both the Health and Safety Contact Centre and the Employment Standards Information Centre provide services in multiple languages.

Resources

- Links to information in this presentation:
- Occupational Health and Safety act and Regulations
- <https://www.ontario.ca/laws/statute/90o01>
- Electronic NOP
- <https://www.enop.labour.gov.on.ca/ENOPWeb/welcome.do>
- E-documents
- <http://www.labour.gov.on.ca/english/hs/forms/>
- <http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/FormDetail?OpenForm&ACT=RDR&TAB=PROFILE&SRCH=&ENV=WWE&TIT=1000E&NO=016-1000E>
- Bill C-45
- <http://www.ccohs.ca/oshanswers/legisl/billc45.html>

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Questions ?