Ensuring worker health and safety can be complicated. For example, choosing and implementing the proper machine guards for equipment can be a complex process. But sometimes the simplest steps can go a long way toward keeping workers safe. A good example is workplace lighting. By making sure that the workplace is adequately lit, you can protect workers from hazards such as slips, trips and falls, keep them from developing conditions such as eye strain and headaches, and ensure they can do their jobs easily and safely. So here’s what you need to know to comply with the lighting requirements in the OHS laws.

Defining Our Terms
This article discusses the basic lighting requirements in the OHS regulations for workplaces in general. It doesn’t cover specific lighting requirements that might apply to certain tasks, such as traffic control, equipment, such as powered mobile equipment, or workplaces, such as underground mines.

5 KEYS TO LIGHTING COMPLIANCE
The OHS regulations in each jurisdiction contain requirements for workplace lighting, often in a section entitled “Illumination.” And although there are some differences, these requirements typically cover these five areas:

#1: Measurement of Light Levels
As discussed more below, some jurisdiction’s OHS regulations have specific lighting level requirements that require minimum lighting levels for certain areas or tasks. So to ensure that you’re in compliance with these requirements, you’ll need to measure the lighting levels throughout the workplace.

The regulations may require you to take such measurements following the procedures in designated standards or guides, such as ANSI standards ANSI/IES-RP-7, “American National Standard Practice for Office Lighting” and ANSI/IESNA RP-1, “American National Standard Practice for Office Lighting”; or the Lighting Handbook published by the Illuminating Engineering Society of North America.
Lighting levels used to be measured in units called “foot-candles” but are now generally measured in “lux” (10.76 lux = 1 foot-candle) or decalux. The measurements are made using a device called a luxmeter or light meter. The OHS regulations or referenced standards may explain exactly how those measurements should be taken to ensure they’re accurate. For example, the guidelines to BC’s OHS regulations explain that for measuring illumination in the field, the Lighting Handbook suggests that:

- Any conditions that might affect the readings, such as interior surface reflectance, lamp type and age, voltage and survey instruments, be noted;
- Detectors be cosine and colour corrected;
- Detectors be used at temperatures between 15°C and 50°C;
- Care be taken to avoid casting shadows or reflecting light onto the detector, while taking readings;
- Lighting systems be on for at least one hour to ensure that normal operating output has been attained before measurements are taken;
- For interior measurements, the area be divided into 60 cm squares, the readings be taken 76 cm above the floor and then averaged; and
- Daylight is excluded from the readings, if possible.

#2: General Lighting Requirements
The most basic lighting requirement is that the workplace must have enough light so workers can do their jobs safely. The OHS regulations take two basic approaches to light level requirements:

**General requirement.** Some OHS regulations simply require the employer to provide sufficient illumination for workers to do their jobs safely and leave it to employers to determine appropriate lighting levels or to comply with designated voluntary standards, such as the ANSI lighting standards mentioned above. For example, the Alberta OHS Code doesn’t specify minimum lighting levels, letting employers determine if lighting in the workplace is adequate for the tasks being performed and the conditions. When making these determinations, employers should consider the following factors:

- The type of activity or task being performed. For instance, jobs involving detailed work or small parts will require more light than other jobs;
- The importance of speed and accuracy in performing the task;
- Type of surfaces in the area, such as whether they reflect or absorb light; and
- Characteristics of the worker performing the task, including his age and vision. (For example, older workers may need more lighting than younger ones.)

**Specific light level requirements.** Other jurisdictions spell out very specific light level requirements in their OHS regulations. These requirements may differ by type or part of workplace or the task being performed in the area and generally specify the minimum levels of light required as measured in lux. For example, the chart on page 3 shows the minimal lighting level requirements under BC’s OHS regulations, which are fairly typical.

**Insider Says:**
In addition to lighting levels, the OHS regulations may also require employers to address other lighting-related issues, such as flickering of lights, glare and contrast.

#3: Types of Lighting
The OHS regulations don’t generally require employers to use specific types of lighting. So employers will typically use a combination of various kinds of lighting to satisfy the requirements, including sunlight or daylight and artificial lighting. Artificial lighting can be further broken into:

- Direct lighting, such as overhead lights that direct most of their light towards the work areas;
- Indirect lighting, which direct their light up and away from work areas; and
- Task or focused lighting, such as a desk lamp.

#4: Emergency Lighting Requirements

In addition to the lighting requirements for the usual working conditions, the OHS regulations also include requirements for emergency lighting. (The chart on page 4 shows the emergency lighting requirements in each jurisdiction’s OHS regulations.) These regulations usually require the provision of emergency lighting when the failure of regular lighting could endanger workers.

In general, the emergency lighting system should come on automatically when the regular lighting system fails and have its own independent power source. Emergency lighting should provide enough illumination so that workers may:
- Conduct emergency shutdown procedures;
- Evacuate the workplace; and
- Restore the regular lighting system.

In addition, employers should regularly test the emergency lighting system to ensure that it’s functioning properly. You can incorporate such testing into the regular emergency drills you should be conducting in the workplace.

#5: Maintenance of Lighting Equipment

To ensure that your workplace is always in compliance with the lighting requirements, make sure that burnt out light bulbs are promptly replaced (and the old ones properly disposed). In addition, you should have procedures for repairing and maintaining lighting equipment so the workplace is always properly illuminated. For example, light fixtures should be regularly cleaned because dirt can reduce the amount of light they emit.

**BOTTOM LINE**

Poor lighting in the workplace can make it harder for workers to do their jobs efficiently and safely. Dimly lit areas may also conceal safety hazards and thus expose workers to injuries. In addition, working in insufficient lighting can impact workers’ health, such as by causing eye strain and headaches. And a lack of emergency lighting can seriously endanger workers in the event of, say, a fire or explosion and make them unable to evacuate safely. So ensure that your workplace complies with the lighting requirements to prevent these issues.

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**Illumination Levels for Certain Tasks under BC Law**

<table>
<thead>
<tr>
<th>Task category</th>
<th>Examples</th>
<th>Minimum Illumination level in lux</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simple orientation for short temporary visits</td>
<td>Inactive storage, waiting areas, VDT screens, log loading and unloading</td>
<td>50</td>
</tr>
<tr>
<td>Working spaces where visual tasks are only occasionally performed</td>
<td>Stairways, freight elevators, truck loading, active bulk storage</td>
<td>100</td>
</tr>
<tr>
<td>Visual tasks of high contrast or large size</td>
<td>Bakery mixing rooms, hospital central (clean) linen rooms, locker rooms, reading good quality text, casual reading, simple assembly, hand or simple spray painting, rough lumber grading, rough woodworking and benchwork</td>
<td>200</td>
</tr>
<tr>
<td>Visual tasks of medium contrast or small size</td>
<td>Hair styling shops, kitchens, vehicle repair garages, sawmill filing room (work areas), reading poor quality text, prolonged or critical reading, medium bench or machine work, mail sorting, fine hand painting and finishing, fine woodworking and finishing</td>
<td>500</td>
</tr>
<tr>
<td>Visual tasks of low contrast or very small size</td>
<td>Difficult assembly tasks, difficult inspections, weaving, clothing alteration, finished lumber grading</td>
<td>1,000</td>
</tr>
<tr>
<td>Visual tasks of low contrast and very small size over a prolonged period</td>
<td>Very difficult assembly tasks, sewing, fine bench or machine work, extra-fine hand painting and finishing</td>
<td>2,000</td>
</tr>
<tr>
<td>Very prolonged and exacting visual tasks</td>
<td>Exacting assembly or inspection, extra fine bench or machine work, precision manual arc-welding</td>
<td>5,000</td>
</tr>
<tr>
<td>Very special visual tasks of extremely low contrast and small size</td>
<td>Very detailed cloth product inspection and examination</td>
<td>10,000</td>
</tr>
</tbody>
</table>

**Insider Says:**

For more information on emergency drills and other emergency preparedness activities, go to the Emergency Preparedness & Response Compliance Centre.
KNOW THE LAWS OF YOUR PROVINCE: Emergency Lighting Requirements

Here are the requirements for emergency lighting in the OHS regulations in each jurisdiction:

FEDERAL

Canada OHS Regulations, Part VI:
1. Emergency lighting must be provided to illuminate the following areas within buildings:
   a. exits and corridors;
   b. principal routes providing access to exits in open floor areas; and
   c. floor areas where employees normally congregate [Sec. 6.10(1)].
2. Except in the case of a primary grain elevator in which hand-held lamps are used for emergency lighting, all emergency lighting provided in accordance with the above must:
   a. operate automatically in the event that the regular power supply to the building is interrupted;
   b. provide an average level of lighting of not less than 10 lx; and
   c. be independent of the regular power source [Sec. 6.10(2)].
3. Where a generator is used as a power source for emergency lighting, the inspection, testing and maintenance of the generator must be in accordance with the requirements referred to in Sec. 6.7 of the National Fire Code, as amended from time to time [Sec. 6.10(3)].
4. Where a central storage battery system is used as a power source for emergency lighting or where emergency lighting is provided by a self-contained emergency lighting unit, the battery system or the unit must be tested:
   a. monthly by hand; and
   b. annually under simulated power failure or electrical fault conditions [Sec. 6.10(4)].
5. Where a battery, other than a hermetically sealed battery, is tested in accordance with the above, the electrolyte level of the battery must be checked and, if necessary, adjusted to the proper level [Sec. 6.10(5)].
6. Where a self-contained emergency lighting unit is tested in accordance with the above, all lamps forming part of the unit must be operated for the time period set out in Sentence 3.2.7.3(2) of the National Building Code, as amended from time to time, that is applicable to the class of buildings to which the building in which the unit is installed belongs [Sec. 6.10(6)].
7. Every employer must record the results of each test performed in accordance with the above requirements and keep the record for two years after the test [Sec. 6.10(7)].

ALBERTA

OHS Code, 2008:
1. An employer must ensure that there’s emergency lighting at a work site if workers are in danger if the normal lighting system fails [Sec. 186(3)].
2. Emergency lighting must generate enough light so that workers can:
   a. leave the work site safely;
   b. start the necessary emergency shut down procedures; and
   c. restore normal lighting [Sec. 186(4)].

BRITISH COLUMBIA

OHS Regulations:
1. If failure of a lighting system would create conditions dangerous to the health and safety of workers, an emergency lighting system must be provided for the workplace and the exit routes [Sec. 4.69(1)].
2. An emergency lighting system must provide dependable illumination while the primary lighting system is off to enable all emergency measures to be carried out, including:
   a. emergency shutdown procedures; and
   b. evacuation of workers from the premises [Sec. 4.69(2)].
3. An emergency lighting system in a fixed facility must meet the requirements of Sec. 3.2.7 (Lighting and Emergency Power Systems) of the BC Building Code [Sec. 4.69(3)].
4. The emergency lighting system must be inspected, tested and maintained to meet the requirements of Sec. 6.8 (Emergency Power Systems and Unit Equipment for Emergency Lighting) of the BC Fire Code [Sec. 4.69(4)].

MANITOBA

Workplace Safety & Health Regulation:
An employer must ensure that a workplace is equipped with adequate emergency lighting that operates if the regular lighting system fails and provides sufficient lighting to enable workers to do the following:
   a. perform necessary emergency shut-down procedures;
   b. leave the workplace safely; and
   c. restore the regular lighting system [Sec. 4.134(1)(a)(ii)].

NEW BRUNSWICK

OHS Regulation:
1. Where failure of the normal lighting system may constitute a danger to a worker’s health or safety, an employer must ensure that emergency lighting is available that:
   a. is independent of the normal lighting source; and
   b. provides a minimum of 50 lux of lighting so as to enable a worker to leave the place of employment safely [Sec. 27(2)].
2. An employer shall ensure that the emergency lighting referred to above is frequently tested to ensure that it will function in an emergency [Sec. 27(3)].

NEWFOUNDLAND & LABRADOR

OHS Regulations, 2002:
1. Where failure of a lighting system would create conditions dangerous to the health and safety of workers, an emergency lighting system must be provided for the workplace and the exit routes [Sec. 40(1)].
2. An emergency lighting system must provide dependable illumination while the primary lighting system is off to enable all emergency measures to be carried out, including:
   a. emergency shutdown procedures; and
   b. evacuation of workers from the premises [Sec. 40(2)].

NORTHWEST TERRITORIES/NUNAVUT

General Safety Regulations:
1. Emergency lighting must be provided in places of employment that are normally used during periods of darkness or that don’t have an available source of natural light [Sec. 19(2)].
2. Emergency lighting must provide a minimum level of 10.763 lx (1 foot-candle) at exits from the place of employment [Sec. 19(3)].
3. Where emergency lighting is required, it must be from a power source independent of the general lighting or where emergency lighting is provided by a self-contained emergency lighting system, the battery system or the unit must be tested:
   a. is independent of the normal lighting source; and
   b. provides a minimum of 50 lux of lighting so as to enable a worker to leave the place of employment safely [Sec. 27(2)].

NOVA SCOTIA

OHS Regulations:
Where failure of the normal lighting system may constitute a danger to the health or safety of a person, the employer must ensure that emergency lighting is available [Sec. 17].

ONTARIO

OHS regulations don’t have general emergency lighting requirements, although they do have such requirements for specific circumstances such as work in tunnels.

For a complete list of the requirements in all jurisdictions, visit OHSInsider.com.
TEST YOUR OHS I.Q.
Must Employer Disclose Ergonomics Assessment to JHSC?

SITUATION
A worker for a government employer suffers disabling work-related injuries. So the employer hires a private consultant to perform an ergonomics assessment of the workplace. The ergonomics assessment report, which recommends strategies to avoid recurrence of such injuries, contains information about the worker, including her injury, absenteeism record, medical history, accommodations for her return to work and physical appearance. The OHS law requires employers to provide the JHSC with any report on workplace hazards, including hazard assessments. The employer doesn’t forward the report to the JHSC, however, believing the privacy laws prevent its disclosure because the report includes the worker’s personal information. A Health and Safety officer says the employer’s violating the OHS law and must disclose the report to the committee. The employer appeals the Safety Officer’s order.

QUESTION
Must the employer give the report to the JHSC?
A. No, because disclosure would violate the privacy laws.
B. No, because a private, outside consultant prepared the report, not the employer.
C. Yes, because the report discloses the results of a hazard assessment.
D. Yes, because the JHSC has a right to all safety-related information.

ANSWER
C. The employer must disclose this report, which is a hazard assessment, to the JHSC.

EXPLANATION
This hypothetical is based on a decision by the OHS Tribunal Canada in which it declared that a report following a worker’s injury was a hazard assessment that must be disclosed to the JHSC. The tribunal noted that the employer, which was regulated by federal OHS law, ordered the ergonomics assessment in response to the worker’s injury. The tribunal explained that the Canada Labour Code required disclosure to the JHSC of any report on hazards in the workplace, including hazard assessments. It didn’t matter that the employer didn’t control the design or contents of the report or that a private third party consultant conducted the assessment. Additionally, although the report contained information about the worker’s injury and medical history, it wasn’t a medical record exempt from disclosure because that information wasn’t collected by a doctor in the course of a doctor-patient relationship. And even if it contained personal information, the Privacy Act allowed disclosure of personal information when required by an act of Parliament, such as the Canada Labour Code, noted the tribunal. Thus, the employer had to give the report to the JHSC.

WHY WRONG ANSWERS ARE WRONG
A is wrong because the privacy laws preventing disclosure of a worker’s personal information have exceptions. For example, one exception allows disclosure without a worker’s consent when another law requires that disclosure. In this case, the OHS law required disclosure of workplace hazard assessments to the JHSC in order to protect all workers from health and safety hazards. Therefore, giving the ergonomics assessment report to the JHSC to comply with this OHS disclosure obligation is an exception to the privacy law restrictions.
B is wrong because an employer can’t escape the obligation to share workplace hazard assessments by hiring a third party to perform the assessment. Many OHS laws require disclosure of hazard assessment reports to JHSCs so they’re informed of all workplace hazards and can do their job to help protect workers from those hazards. Who actually completes such reports is irrelevant. Here, the employer hired the consultant to assess the workplace for hazards in response to a worker’s injury. The fact that the employer didn’t handle the assessment internally doesn’t affect its obligation to share the report with the JHSC.
D is wrong wrong because a JHSC doesn’t have unlimited rights to safety-related information under OHS law. Other laws can prevent disclosure of certain information. As discussed above, privacy laws can prevent disclosure of medical records prepared by a physician for purposes of treating a worker. Additionally, documents protected by attorney-client privilege could be exempt from disclosure requirements. For example, if an employer sought an attorney’s legal advice regarding a specific safety issue, a memo containing the lawyer’s advice to the employer may be protected from disclosure to the JHSC by attorney-client privilege. In fact, widely disseminating such a document could waive that privilege. So the document shouldn’t be shared with the JHSC or else a prosecutor could argue that the employer waived the privilege. (For more information about attorney-client privilege, see “Using ‘Privilege’ to Keep Incident Investigation Reports Confidential.”)

SHOW YOUR LAWYER
Unions and other groups have been pushing for criminal charges to be brought in more workplace safety incidents. These groups recently got their wish when criminal negligence charges were announced in the derailment of a train in Québec, which claimed the lives of 47 people. But there’s still been criticism of the charges. Here’s a look at the incident and charges.

**THE CASE**

**What Happened:** On July 6, 2013, a Montreal Maine and Atlantic train carrying 72 cars of crude oil slipped downhill, derailed and exploded near downtown Lac-Mégantic, Québec. The explosion and resulting fires killed 47 people (although no railway employees), caused massive destruction and resulted in the evacuation of thousands. In addition, the Chaudière River was contaminated by an estimated 100,000 litres of oil.

**The Charges:** On May 12, 2014, a spokesman for Québec’s director of criminal and penal employees, caused massive destruction and resulted in the evacuation of thousands. In addition, the Chaudière River was contaminated by an estimated 100,000 litres of oil.

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**The government charged Montreal Maine and Atlantic Railway Ltd. (MMA), which filed for bankruptcy in the wake of the disaster and is currently up for sale.**

**ANALYSIS**

Given the magnitude of this incident, it’s not surprising that criminal negligence charges were brought. And the fact the incident occurred in Québec, which has been more aggressive than any other jurisdiction in bringing criminal negligence charges for workplace safety incidents, also made it likely that such charges were coming. But what’s troubling is that no one in MMA’s senior management is currently facing charges. (In contrast, after a recent mining disaster in Turkey that killed 301 miners, the government arrested four company officials, including the operating manager and security chief.)

There’s an argument to be made that MMA’s overall safety program and culture were seriously lacking and thus resulted in this tragedy. For example, the Canadian Centre for Policy Alternatives released a study on the derailment and its causes. The report notes that MMA reported 129 accidents since 2003, including 14 main track derailments. In fact, between 2003 and 2011, MMA’s accident rate was more than double or triple the US average for the rail industry. But despite this troubling safety record, the Minister of Transport gave MMA an exemption to the rule that Canadian railways must operate with at least two-person crews. In addition, the report says that MMA was an aggressive cost cutter and a poor performer compared to other short-line railways in terms of maintenance and operation.

The police investigation is ongoing and it’s possible that other charges could be laid in connection with the derailment, including additional criminal charges as well as charges under the OHS and environmental laws. In the meantime, the federal government has taken some steps to prevent similar incidents in the future (see, Federal below).
Month in Review

- Number of workers
- Number of lost-time claims (LTC) and fatalities
- Disabling injury rate (DIR)
- Whether the employer holds a Certificate of Recognition
- Industry and province-wide LTC and DIR for comparison.

CARES

Call Centre Couldn’t Accommodate Mentally Disabled Worker
A call centre fired a probationary worker who had Asperger’s Syndrome. He challenged the termination, claiming his disability wasn’t accommodated. An arbitrator ruled that the worker did have a recognized disability but the call centre wasn’t sufficiently notified of it and so the duty to accommodate wasn’t triggered. In addition, the arbitrator also found that the worker couldn’t have been accommodated anyway. The Court of Appeal agreed that the call centre couldn’t have accommodated the worker in the position for which he was hired. In addition, the other jobs the worker suggested wouldn’t have been suitable either. So it dismissed the appeal [Telecommunications Workers Union v. Rogers Communications Inc., [2014] ABCA 154 (CanLII), May 6, 2014].

Company and Worker Fined $94,000 for Serious Hand Injury
A worker was removing ice from a conveyor when his hand became caught between the running conveyor belt and a scraper, causing serious injuries. The company pleaded guilty to violating Sec. 18(1) of the OHS Act by failing to report the injury as soon as possible. The court fined it $90,000. A worker also pleaded guilty to a safety offence and was fined $4,000 [Stony Valley Contracting Ltd. and Jeremy Worden, Govt. News Release, May 12, 2014].

BRITISH COLUMBIA

LAWS & ANNOUNCEMENTS

April 22: Book for Healthcare Supervisors Released

WorkSafeBC released Ensuring Staff Are Safe and Healthy: The Role of Health Care Supervisors, a new publication from the Health Care Safety Professionals Association of BC. The book explains how supervisors in healthcare settings can contribute to workplace health and safety and will be useful for employers, supervisors, educators, JHSC members and worker representatives in acute, residential, home and community care.

April 21: WorkSafeBC Conducting Asbestos Enforcement Blitz

Through Dec. 2014, WorkSafeBC is conducting an enforcement blitz aimed at asbestos in residential demolition worksites. Prevention officers will conduct planned inspections of single-family demolition worksites to ensure homeowners, prime contractors, hazardous material survey contractors, asbestos abatement contractors and consultants are informed and equipped to safely remove asbestos-containing materials and are complying with the OHS Regulation. The requirement for adequate planning and supervision of hazardous material surveys and high-risk asbestos removal will be stressed during these inspections.

May 20: OHS Guidelines Revised

Guidelines for the following requirements have been updated:
- Prescription safety eyewear
- Faller training and forestry operation faller training
- Fire extinguishers
- Cylinders of breathing air
- WHIMS supplier labels and supplier MSDSs.

May 22: Book for Healthcare Supervisors Released

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NEW BRUNSWICK

LAWS & ANNOUNCEMENTS

April 22: Changes to Workers’ Comp Process Proposed

The government proposed amendments to the Workplace Health, Safety and Compensation Commission Act that will:
- Create an external workers’ comp appeals tribunal separate and independent in its operations from WorkSafeNB
- Establish a chairperson of the appeals tribunal who’ll report directly to the Minister of Post-Secondary Education, Training and Labour
- Ensure that the tribunal issues decisions within 90 days and WorkSafeNB implements them within 30 days from the final hearing
- Establish an internal fair dispute resolution process within WorkSafeNB.

NEWFOUNDLAND & LABRADOR

LAWS & ANNOUNCEMENTS

May: Scaffolding Safety Guide Available

The WHSCC and OHS Division, Service NL have developed and produced a Scaffolding Safety Guide to help employers and workers in the erection, care and safe operation of scaffolds in the workplace.

April 24: 2013 Incident Rates Released

The WHSC released the lost-time incidence rate and other injury statistics for 2013. Highlights:
- Lost-time incident rate was 1.6 per 100 workers, the same as 2012
- 92.1% of employers are injury-free, up from 91.8% in 2012
- Young workers (aged 15–24 years) reported 1.5 lost-time incidents per 100 workers, up slightly from 1.4 in 2012

MANIToba

LAWS & ANNOUNCEMENTS

April 28: Fines for Workers’ Comp Violations Could Increase

A bill before the Manitoba legislature would increase the maximum fines for violations of the Workers Compensation Act. The maximum fine for employers would rise to $50,000 from $15,000 and increase to $5,000 from $1,500 for workers. If passed, Bill 65 would also bar employers from taking discriminatory action against any worker who exercises their rights under workers’ comp law.
Month in Review

- Lost-time incidents for falls from heights decreased from 8.6 to 8.5 per 10,000 workers.
- There were 30 fatalities in 2013, five due to workplace accidents and 25 from occupational illnesses, up from a total of 26 workplace fatalities for 2012.

CASES

Mine Drilling Company Penalized $50,000 for Worker’s Burns
A mine drilling company worker suffered severe burns to his hands and face when a drilling machine he was operating caught fire. The company pleaded guilty to failing to provide a safe workplace and to provide the necessary information, training and supervision to ensure the safety of workers. The court fined it $20,000 for each charge and ordered it to contribute $50,000 towards public education programs. [CABO Drilling (Atlantic) Corp., Govt. News Release, May 20, 2014].

Employer Fined $15,000 for Traffic Incident Involving Road Crew
A crew of workers was inspecting the deterioration of asphalt on a road when a car veered into the group. One worker, an engineer, died at the scene. Two others were seriously injured. None of them were wearing protective gear or had been trained to work at such a site. An employer pleaded guilty to three OHS charges and was fined $13,000. [Irving Oil Ltd., May 9, 2014].

LAW & ANNOUNCEMENTS

NORTHWEST TERRITORIES

May 6: Mental Health Magazine Launched
The government launched Mind & Spirit, a wellness magazine to raise awareness of mental health. The magazine will help inspire people to talk about mental health by sharing success stories of individuals dealing with and overcoming mental health and addiction issues. It also provides information on the services that are available to residents seeking help.

NOVA SCOTIA

April 25: Phase 2 of Workplace Health and Safety Regulations Expected Soon
The draft of the Workplace Health and Safety Regulations Phase 2 was expected to be available in May. Intended in June 2015, the Regulations will eventually incorporate all the current regulations other than Underground Mining Regulations. The parts covered in Phase 2 are First Aid; Sanitation and Accommodation; PPE; Excavation and Trenching; Blasting Safety; Confined Spaces; Surface Mine Workings; Occupational Diving; and JHSCs.

NUNAVUT

May 19: New Workers Should Know Their Rights
The WSC reminded new workers that they should know their safety rights so they can stay safe on the job. The three key rights:
- Right to know
- Right to participate
- Right to refuse.

ONTARIO

May 8: JHSC Certification Training Standards Released
The CPO released the 2014 JHSC Certification Training Program Standard and 2014 JHSC Certification Training Provider Standard, which are expected to come into effect in early 2015.

In the meantime, the current certification standards remain in effect. The new standards and certification requirements include:
- Part One training that’s generic to all workplaces where certified JHSC members are required and would have to be taken from an approved training provider
- Part Two training that’s sector-specific and would be formalized with approved training programs taken from approved training providers.

May 9: Two Inspection Blitzes Launched
The MOL launched two inspection blitzes in May, focusing on:
- Excavations, specifically support systems, utilities locations and measures to prevent workplace incidents
- New and young workers, specifically their instruction, training and supervision as well as that they meet minimum age requirements and follow safety measures and procedures.

April 25: Results of Construction Inspection Blitz
In Jan. 2014, MOL inspectors targeted construction hazards during a blitz at active, existing workplaces where non-construction workers were actively employed and doing work. Inspectors conducted 903 visits to 808 workplaces and issued 1,696 orders and requirements under the OHS Act, including 80 stop work orders.

CASES

Lack of Mandatory Inquests for Farm Worker Deaths Isn’t Discriminatory
A worker from Jamaica at a tobacco farm was crushed to death by a 1,000 pound bin that fell from a steel bin lift. The Chief Coroner declined to hold an inquest into the incident. So his family sued, arguing that it was discriminatory for construction and mining deaths to trigger mandatory coroner’s inquests, but not those of seasonal agricultural workers. The Human Rights Tribunal ruled that the Coroner Act doesn’t discriminate against migrant farm workers. The lack of a mandatory inquest for such workers doesn’t mean their lives are of lesser value or that their safety is less worthy of protection, noted the Tribunal. But mining and construction workers, unlike agriculture workers, face a higher risk of traumatic workplace deaths and the causes of those deaths are quite varied, so inquests into those deaths are more likely to produce useful recommendations, it explained [Pearl v. Ontario (Community Safety and Correctional Services), (2014) HRTO 616 (CanLII), April 30, 2014].

Excavation Company’s Due Diligence Defence Rejected as to OHS Charges
A truck driver was loading an excavator onto a trailer behind a truck when the excavator slipped off the trailer and fell onto its side. The glass in its cab shattered and he was injured. The excavation company was charged with OHS violations. The court convicted it of failing to ensure the excavator was moved in a safe manner and that the worker wore a seatbelt. It also rejected the company’s due diligence defence. The court observed that there appeared to have been a presumption that once oral instructions were conveyed, they would be understood and complied with by workers. But there was no evidence as to how those instructions would be reinforced or enforced or whether any steps were made to ensure that anyone working for the company understood the instructions. And though the company was small, it required a system and process for establishing appropriate written OHS policies and procedures, communicating them, monitoring them and enforcing them in a vigilant manner, concluded the court [Ontario (Ministry of Labour) v. Anray Ltd., (2014) ONCJ 203 (CanLII), April 15, 2014].

OK to Fire Worker for Continuing to Refuse Work Deemed Safe
A supervisor asked a worker to wash a conveyor. He refused, claiming it was unsafe to wash the conveyor because it would generate airborne dust. The employer investigated the refusal and concluded that the task wasn’t unsafe, provided the worker used a respirator and followed designated procedures. When he continued to refuse, the MOL investigated and agreed with the employer. The worker still refused to wash the conveyor, saying he didn’t have his respirator or his fit card indicating his appropriate model and size respirator. And he claimed not to recall that information. So the employer fired him. The worker claimed the termination was a reprisal for his work refusal. But the Labour Relations Board ruled that the worker was fired for continuing to refuse work that had been determined not to pose a danger to him. And there was evidence his fit card had been in his locker the whole time [Dagenais v. Glencore Canada Corp. Kidd Operations, (2014) CanLII 18553 (ON LRB), April 8, 2014].

Court Reduces Punitive Damage Awards for Former Wal-Mart Employee
A former Wal-Mart assistant manager sued the company and her manager for constructive dismissal, claiming she was forced to quit after suffering six months of mental abuse by the manager as well as an assault by an assistant manager. A jury found in her favour and awarded her $1 million in punitive damages against the company and $150,000 against the manager. But the Court of Appeal just reduced those awards. It explained that punitive damages are intended
to condemn particularly egregious behavior and are appropriate when the other damage awards aren’t sufficient for retribution, denunciation and deterrence. Given the total amounts awarded to the ex-employee, those purposes were served with lesser punitive damage awards. So the Court reduced those awards to $10,000 for the manager and $100,000 for Wal-Mart. Thus, the total damages were $110,000 against the manager and $350,000 against Wal-Mart [Boucher v. Wal-Mart Canada Corp., [2014] ONCA 419 (CanLII), May 22, 2014].

Reporter Lied about Job Restrictions Caused by Ankle Injury
A newspaper reporter suffered a serious ankle injury on assignment that required three surgeries. While she was initially recovering, the paper enabled her to work from home. The reporter eventually returned to the office, but said she couldn’t drive or use mass transit. In the office, she walked slowly and used two canes. But co-workers saw her walking without the canes and much faster outside of work. The paper had an investigator follow and video tape her, confirming that she could drive and walk. It then fired her for lying about her restrictions. An arbitrator found that the reporter knowingly misled the paper about her ability to do her job, which undermined the accommodation process and her relationship with her employer. The paper had reasonable cause to investigate her conduct outside of work. And based on its findings, it had just cause to terminate her. concluded the arbitrator [Toronto Sun v. Unifor Local 87-M, [2014] CanLII 22529 (ON LA), April 7, 2014].

Privileges Restored to Doctor Involved in Domestic Violence Incident
After a doctor was charged with domestic violence related crimes, the hospital investigated the situation and suspended his privileges because his brother- and sister-in-law also worked there and they’d directly intervened in the domestic situation. The hospital board agreed to reinstate his privileges subject to certain conditions, including a risk assessment. But the doctor appealed. The hospital argued that it had a duty under the OHS laws to ensure workers felt safe in the workplace. The Appeals Board found that the initial suspension was a reasonable effort to comply with the hospital’s workplace violence duties under the OHS law. But it concluded that there was no legitimate concern for staff safety that justified the hospital’s boards imposition of a risk assessment. So the Appeals Board reinstated the doctor’s privileges subject to certain conditions [Kaila v. Bluewater Health, [2014] CanLII 19532 (ON HPARB), April 23, 2014].

Crushing Death of Worker Costs Manufacturer $755,000
A worker performing maintenance on a metal mould at a manufacturing plant raised the mould’s lid, which was held open by a metal hook attached to an overhead hoist. While he was working under the elevated lid, the hook broke in half, causing the lid to strike him on the head and crushing him between the lid and the lower section of the mould. He died from his injuries. An MOL investigation found that no blocking devices had been used to prevent the elevated lid from closing while the worker was under it. The manufacturer pleaded guilty to failing to ensure that machinery, equipment or material that’s temporarily elevated and under which a worker may pass or work was securely and solidly blocked to prevent it from falling or moving and was fined $755,000 [Johnson Controls Automotive Canada LP, Govt. News Release, May 20, 2014].

Railroad Manufacturer Fined $140,000 for Hydraulic Press Incident
A worker was helping a press operator on a hydraulic press at a railroad manufacturer’s plant. The helper saw a loose machine component behind the machine’s punch line. He thought the operator had stopped the operation of the press and so he reached under the punch line to retrieve or adjust the component. But the operator activated the press, which pinched the helper’s arm and caused a permanent injury. The press had a safety feature that used an infrared light beam, which stopped the press when something was inside its surveillance area. An MOL investigation found that at the time of the incident, the beam hadn’t been properly adjusted and so didn’t provide protection to workers. In addition, the workers involved in the incident didn’t get training on how to operate the press. The manufacturer pleaded guilty to failing to provide information, instruction and supervision to a worker to protect his health and safety and was fined $140,000 [National Steel Car Ltd., Govt. News Release, April 28, 2014].

PRINCE EDWARD ISLAND

LAWS & ANNOUNCEMENTS

May 6: 2013 WCB Report Released
The WCB released the 2013 Annual Report. Highlights:
- The number of claims for workplace injuries decreased by close to 4% to 1,788
- There were no workplace fatalities in 2013
- Employer assessment rates were reduced to $1.92, representing an 18% reduction over the past 10 years.
2014 OHS INSIDER SEMI-ANNUAL INDEX

This index lists all articles published in the OHS Insider monthly newsletter from Jan. to June 2014. These articles are also available at www.OHSInsider.com and can be accessed for free with your current membership. And many of these articles include related online tools, charts and other resources designed to make your job as a safety professional easier.

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<td>&quot;Test Your OHS I.Q.: Is Worker Entitled to Workers' Comp if Injured Violating a Safety Rule?” April 2014, p. 5.</td>
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BRIEF SENIOR MANAGEMENT:
Don’t Interfere with Efforts to Accommodate Workers

A part-time paramedic with multiple sclerosis had decreased sensation in his fingertips, making him unable to “palpate a pulse.” The health service wouldn’t let him work as a paramedic, saying being able to feel a pulse was a bona fide occupational requirement. The BC Human Rights Tribunal found the health service and a senior manager liable for disability discrimination by failing to accommodate the paramedic. There was no evidence of actual harm arising from not having both paramedics in an ambulance able to palpate a pulse. So the service could’ve accommodated him without undue hardship by making him a “Driver Only” or “Special Driver Only.” The Tribunal specifically criticized the senior manager for “actively thwarting” accommodation efforts and deliberately trying to prevent the paramedic from returning to work [Cassidy v. Emergency Health Services Commission].

THE PROBLEM
Human rights laws require employers to make reasonable efforts to accommodate disabled workers unless doing so would be an undue hardship. And workers have an obligation to cooperate with the accommodation process. But employers must also cooperate in this process. The Cassidy case illustrates what can happen when a member of management doesn’t assist in the accommodation process but actively tries to undermine it.

THE EXPLANATION
The duty to accommodate means you can’t automatically fire workers because a disability makes them incapable of doing their previous jobs. For example, if a worker injuries his shoulder and so is unable to lift items over a certain weight, you’ll need to determine what he’s able to safely do given his physical limitations and what he can’t do because of his medical restrictions. And then you’ll have to modify his duties accordingly unless doing so would impose an undue hardship on the company, which is very hard to establish.

The accommodation process can involve many parties besides the disabled worker, including his supervisor, the safety coordinator, a representative from HR, the return-to-work program manager and members of management. The process can be long, complicated and often frustrating for all parties. It may involve some trial and error as both the company and the worker try to find accommodations that work for everyone. But just as workers have a duty to cooperate in this process, such as by providing enough information about their medical condition to allow the employer to create successful accommodations, employers must also participate in this process in good faith. And certainly no one involved in the accommodation process—especially members of senior management—should try to thwart these efforts.

In the Cassidy case, the Tribunal was very critical of the senior manager. Instead of supporting the paramedic in his search for an effective accommodation, the manager actively undermined the accommodation process on several occasions. For example, he distorted the information he received about the paramedic’s condition and limitations when communicating it to others involved in the process. Although the manager’s actions may have arisen out of genuine concerns, said the Tribunal, they were “seriously misconceived” and “constituted substantive violations of the duty to accommodate.” The manager pursued issues respecting the paramedic’s ability to drive an ambulance unreasonably and used information he knew or should’ve known was tainted as an excuse to delay the paramedic’s return to the workplace, resulting in a dramatic delay in his accommodation as a Driver Only. In short, the senior manager didn’t do the things expected of management when considering accommodations.

THE SOLUTION
It’s important that companies properly handle accommodation requests from workers—and senior management should set the example. So to avoid a situation like the one in Cassidy and liability for disability discrimination, make sure that, whenever a worker requests an accommodation, the company asks the following questions:

1. Does the worker have a disability?
2. If so, what are his restrictions or limitations?
3. What effect do these restrictions and limitations have on his work and the company’s needs?
4. How could the worker’s duties be modified to meet these restrictions?
5. If more than one modification is possible, what are the benefits and detriments of each to the company relative to cost, productivity, quality, health and safety, etc.?
6. If the worker’s job can’t be modified, are other accommodations, such as other jobs or other shifts, possible and available?
7. What will be the effect of such accommodations on the company, considering cost, production quality, health and safety, and on the worker?
8. Is accommodating this worker an undue hardship?

Insider Says:
For more on accommodating workers, watch this recorded webinar on whether you have to create a job for an injured worker returning to work.

SHOW YOUR LAWYER
Cassidy v. Emergency Health Services Commission, [2013]
BCHRT 116 (CanLII), May 6, 2013
Going shirtless may be cooler in the summer but it exposes workers to what health hazard? 

During the summer, workers who work outside are at risk of not only heat stress and other heat-related illnesses but also skin cancer from exposure to the sun. The construction workers in this picture appeared to have removed their shirts because it’s hot. But although going shirtless may make them feel cooler and help them avoid heat-related illnesses, it exposes a lot of bare skin to the sun. And even if they’re wearing sunscreen—which they should be—proper clothing would be a better safety measure.

Skin Cancer 101 
The sun’s UV radiation penetrates the skin and harms the DNA within the cells and other parts of the skin. In the short term, sun exposure can cause sunburns and suntans. But both are signs of skin damage. And repeated exposure over the years may result in sun-induced skin changes, such as wrinkles, mottling of skin colour and skin cancer.

So if your workers are outside for much of the workday, they’re at risk of skin damage and even skin cancer from exposure to the sun. That risk is heightened because many outdoor workers are in the sun when its UV radiation is at its strongest: between 12 noon and 2 pm. And although the sun is strongest in the summer, workers are at risk year-round.

Protecting Workers from Skin Cancer 
If your workers are exposed to the sun and so at risk of developing skin cancer, take these steps to protect them:

- Implement a sun safety policy (adapt and use this model policy)
- Educate workers on the risks of sun exposure, such as by giving them this handout or hanging this poster in the workplace
- Give this quiz to all workers who work outside so they can determine their risk of developing skin cancer based on factors such as their colouring, family history of skin cancer and whether they tan or burn.

Here are six tips from the Canadian Dermatology Association, which has many great resources on sun safety, that workers can follow to protect themselves:

1. Try to limit the amount of time you work outdoors in the sun from 11 am to 4 pm.
2. Seek shade from buildings, trees, canopies, etc, as much as possible, especially during breaks.
3. Wear a wide-brimmed hat (more than 8 cm or 3 inches). Attach a back flap to a hardhat to cover the back of the neck and a visor for the front of the face. (Three of the most common skin cancers are found on the face, head and neck.)
4. Wear clothing that covers as much of the body as possible. Fabrics that don’t let light through work best. Make sure clothing is loose and comfortable.
5. Apply an SPF 30 or higher, broad spectrum (which protects against UVA and UVB) sunscreen to all exposed areas of skin before you go outside. Apply a broad spectrum, SPF 30 lip balm.
6. Reapply sunscreen at midday or more often if you’re perspiring heavily.

Go to OHSInsider.com to download a PDF or Word version of this Spot the Safety Violation you can print out and use to train workers.

On the Spot the Safety Violation page, you’ll find dozens of these unique training tools on topics ranging from confined spaces and fall protection to ladder safety and respiratory protection. And there’s a Special Report of 12 of our best Spot the Safety Violations.

Send Us Your Pictures!
Do you have pictures of safety hazards or workers engaged in unsafe conduct? Send them to us at SafetyPhotos@SafetySmart.com and we may use them in a future Spot the Safety Violation.