

# Alberta OHS Law Year in Review



## The biggest new OHS laws and fines in Alberta in 2020.

As in every other province, complying with the new COVID-19 public health rules and emergency orders put in place to prevent workplace infection will be the most imperative challenge for Alberta OHS directors in 2021. But while things look particularly grim as the year begins, the hope and expectation is that things will slowly start getting back to normal. So, our analysis focuses on the long-term changes, both COVID- and non-COVID-related, that you need to be aware of heading into 2021. Here are the Top 5 new laws.

### 1. Elimination of Duty to Reinstate Injured Workers & Other Bill 47 Workers Comp Changes

Alberta's United Conservative Party (UCP) government has determined to roll back various labour and employment reforms enacted under its New Democratic Party (NDP) predecessor. On December 9, the government took aim at NDP workers comp reform by securing passage of Bill 47, the *Ensuring Safety and Cutting Red Tape Act, 2020*). The new legislation provides for 2 sets of pro-employer changes in 2021.

**Round 1:** The first set of changes took effect on January 1, 2021, and include:

- Restoration of the insurable earnings cap to either 90% of a worker's net earnings at the time of injury or a maximum set by the Alberta WCB (\$98,700 for 2021);
- Elimination of presumptive coverage of psychological injuries except for first responders, correctional officers and emergency dispatchers
- A new rule obligating WCB to pay benefits to workers terminated from modified work due to willful egregious conduct as if modified work was still in place.

**Round 2:** The second set of changes, which take effect on April 1, 2021, include replacing the controversial NDP requirement that employers reinstate injured workers with over 12 months' service with a far less demanding duty to cooperate in a worker's safe return to work. Employers are also no longer required to keep making health plan contributions for workers off work due to work injuries.

### 2. Clarification of Work Refusal Rules

Alberta was one of several provinces that had to contend with record numbers of

OHS work refusals due to COVID. As in those other provinces, OHS investigators found almost all of these refusals invalid and ordered the workers to return to work. The other key development was the adoption of Bill 47, which in addition to undoing pro-worker workers comp changes, bans work refusals related to hazards that are normal for the job, a requirement many jurisdictions impose. For refusals to be justified, the hazard must now also be 'undue.'

**Takeaway:** The new rules make it harder for workers in Alberta to justify not only COVID but other types of work refusals. However, they're completely in line with the requirements of most other jurisdictions.

### 3. Revised JHSC & JHSC Training Requirements

On January 31, 2020, a pair of important new JHSCs rules took effect:

#### A. How Many JHSCs/Safety Representatives Multi-Site Employers Need

**Old Rule:** Employers that employed 20 or more workers at sites expected to last longer than 90 days had to have a JHSC **at each of its sites**.

**New Rule:** Employers that employ 20 or more workers at sites expected to last longer than 90 days must have a JHSC **for its company**. The same rule applies to employers with fewer than 20 workers at multiple sites where a safety rep is required.

What **didn't** change is the requirement that prime contractors have a JHSC at each site with 20+ workers where work is expected to last longer than 90 days and a safety rep at each site with 5 to 19 workers expected to last longer than 90 days.

#### B. JHSC Co-Chair Training Requirements

**Old Rule:** JHSC co-chairs had to complete 2 modules of specialized training: i. Part 1: A 2-hour prerequisite course providing a general overview of OHS rights and duties and JHSC functions; and ii. Part 2: A course of 6 to 8 hours delivered by designated trainer providing details about JHSC functions.

**New Rule:** Only the Part 2 training is required, provided that it meets the training standards and is provided an approved provider.

### 4. Workers Comp Flexibility for Farm & Ranch Employers Under Bill 26

In 2016, the NDP government enacted Bill 6, the *Enhanced Protection of Farm Workers Act*, eliminating the historic exemption of farm and ranch workers from Alberta's employment, labour and workers comp laws. part of the province's regulatory scheme. Keeping a campaign promise, the succeeding UCP securing the enactment of Bill 26, the Farm Freedom and Safety Act, to undo Bill 6, including mandatory workers comp coverage of farm and ranch workers. Effective January 31, 2020, farm and ranch employers with more than 5 employees (not including family members and employees employed for less than 6 months) must ensure that workers have **either** Alberta WCB coverage **or** private insurance. Employers with fewer than 5 employees remain exempt from mandatory workers comp.

## 5. Alberta High Court Makes Key Ruling on Due Diligence

A crucial case on due diligence began when a tire repair worker ordered the driver of a semi-truck with a flat tire to inch his vehicle forward on the platform, not realizing his co-worker was underneath jacking up the front wheels. The Crown claimed the shop owner didn't take 'reasonably practicable' measures to protect the victim but the lower court found due diligence and tossed 4 of the 5 charges. Both workers were experienced and properly trained and the incident was the result of a series of errors, miscommunications and terrible bad luck that were too bizarre to reasonably foresee, the court reasoned. The owner appealed, saying the one conviction for failure to ensure the isolation of hazardous energy during servicing (in this case, ensuring the truck was shut down and immobilized) was inconsistent with the rest of the verdict and should be reversed. But the Alberta Court of Appeal said the verdicts weren't inconsistent and that it's possible to exercise due diligence as to one violation but not another involving the same incident [R v Kal Tire, 2020 ABCA 200 (CanLII), May 13, 2020].

### 5 Biggest OHS Fines in Alberta in 2020

By closing courts and diverting enforcement resources to COVID-19, the pandemic slightly reduced the volume and amount of OHS fines in Alberta. Here were the 5 biggest fines that did come down in 2020:

1. **\$325,000** against the Town of Drayton Valley for failing to follow the manufacturer's instructions of a riding lawnmower resulting in a fatal incident involving a summer student.
2. **\$325,000** against the City of Edmonton for a machine guarding violating resulting in the death of a foreman.
3. **\$315,000** against Element Technical Services Inc. for failure to implement safe work procedures resulting in the death of a pipe worker.
4. **\$200,000 + 1.5 years Enhanced Regulatory Supervision** against Horton CBI, Limited for failing to provide fall protection to welder killed in a scaffold fall.
5. **\$170,000 + 2 years Enhanced Regulatory Supervision** against Jasper Auto Parts (1965) Ltd. stemming from death of garage worker in jack stand accident.