

Changes to OHS Law Get Royal Assent in BC



In the wake of two sawmill tragedies in BC, the government proposed a number of changes to Part 3 of the *Workers Compensation Act* (the Act). Bill 9, which includes those proposed changes, just received Royal Assent on May 14, 2015. According to WorkSafeBC, the goal of the changes is to improve workplace health and safety, and strengthen the tools that it uses to enforce the Act and the *OHS Regulation*. Here's an overview of the key changes made by Bill 9 and their impact on employers.

BILL 9

Key Dates: Some of the changes to the Act took effect May 14, 2015, while others will follow later in the year or in 2016. For example, a provision that establishes compliance agreements is expected to come into effect in Sept. 2015, while OHS citations for employers are expected to be introduced in early 2016.

Key Changes: The following four amendments to the Act are now in effect:

Expanded stop work order powers. There are two major changes to stop work orders. First, the threshold for being able to issue a stop work order has changed. WorkSafeBC may now consider a stop work order when:

- There are reasonable grounds to believe there's a high risk of serious injury, serious illness or death; or
- An employer fails to comply with the same order twice within a year and there are reasonable grounds to believe that there's a foreseeable risk of serious injury, serious illness or death.

Second, the potential scope of the stop work order has changed. A stop work order may now also be made applicable to other or all workplaces of an employer if there are reasonable grounds to believe that the same or similar unsafe working or workplace conditions exist at the other workplaces (a 'stop operations order').

Changes to employer incident investigations. Bill 9 imposes a new two-step employer incident investigation process. Sec. 175 of the Act was amended to require an employer to undertake a preliminary investigation within *48 hours* of

a safety incident. Following the preliminary investigation, the employer must, without undue delay, undertake any corrective action determined to be necessary and then conduct a full investigation. Under Sec. 176, an employer must now submit a full investigation report to WorkSafeBC within *30 days* of an incident, unless granted an extension. There are no changes to the types of incidents that employers must investigate. That is, employers must still investigate all the incidents they're currently required to, including fatalities, serious injuries, near-misses, etc. as well as diving- and blasting-related incidents.

Expanded injunction powers. The amendment provides a mechanism to deal with individuals who fail to comply with the Act or Regulation after WorkSafeBC has exhausted other appropriate enforcement methods. Sec. 198 currently lets the Board apply to the BC Supreme Court for an injunction to either restrain a 'person' (which includes corporate and individual employers, owners, supervisors, suppliers, workers, etc.) from continuing or committing a violation or require a person to comply with the Act, Regulation or an order. The amendments to the injunction provisions now enable the court to also grant an injunction restraining a person from carrying on in an industry, or an activity in an industry, indefinitely or until further court order.

Changes to penalty due diligence. Sec. 196 of the Act deals with administrative penalties. Currently, before imposing a penalty, the Board must determine that an employer failed to exercise due diligence. Bill 9 clearly places the onus of due diligence on the employer. This shift has already been reflected in part by the use of the due diligence letter in the new 90-day penalty process. The Bill 9 changes aren't expected to impact this practice.

ANALYSIS

The changes with the most direct and immediate impact on BC employers are those relating to incident investigations. WorkSafeBC claims that the tight timeframes will ensure not only that remedial action happens in a timely manner but also that employers have time to conduct an appropriate investigation. In light of these tight deadlines, BC employers should review the new regulatory requirements and revise their incident investigation policies appropriately. And ensure that all parties who may be involved in incident investigations, including supervisors, safety personnel and members of the JHSC, are trained on the new requirements and updated policies.