

# COMPLIANCE: Answers to 5 Key Questions about the OHS Program Requirements



A subscriber asked us about the requirements for OHS programs across Canada. For example, he wanted to know how many employees a company must have before it's required to have a written safety program. Other safety professionals may have the same question or a general interest in the topic of OHS programs. So in that spirit, here's a look at the requirements for OHS programs and five key questions'and the answers to them'to help you comply with such requirements.

## Defining Our Terms

Most OHS laws use terms such as health and safety program, occupational health and safety program or workplace health and safety program. Federal OHS law uses the term hazard prevention program, while in Qu bec, they use the term prevention program. And Alberta OHS laws refer to health and safety plans. For simplicity's sake, we'll use the term 'OHS program' to refer to all such programs/plans.

## 5 KEY QUESTIONS

[learn\_more caption="1. Are You Required to Have an OHS Program'"]

With the exception of Alberta, every jurisdiction requires at least some employers to have an OHS program. In Alberta, an employer is only required to implement an OHS program if ordered to do so by a Director. (See [this chart](#) for the requirements in each jurisdiction.) In most jurisdictions, employers with more than a designated number of employees'usually 10 or 20'must have an OHS program. A few jurisdictions require *all* employers to have an OHS program, regardless of size or industry. In BC, SK and YT, the need for an OHS program is based on a combination of number of employees and the degree of hazard associated with the work or industry, or inclusion of the workplace on a list of designated types requiring OHS program. And in Qu bec, employers of designated types of workplaces must have such programs.

In addition, the OHS laws may also provide that an employer not otherwise required to have an OHS program may be required to implement one if ordered to do so by an OHS official, such as in response to deficiencies identified in a safety inspection of the workplace.

Note that if your workplace isn't required to have an OHS program by the OHS laws, it may still be required to have such a program under the principles of due diligence. Remember that the Supreme Court in the seminal *R. v. Sault Ste. Marie (City)* case, which established the due diligence defence, specifically stated that one of the most important factors in due diligence is whether the defendant developed 'a proper system to prevent commission of the offence.' Cases decided since *Sault Ste. Marie* have made it clear that by 'proper system,' the Court meant the kinds of policies and procedures to identify and eliminate hazards that are at the heart of a formal OHS program. So if you don't have an OHS program, it's unlikely you'll be able to prove you exercised due diligence if charged with safety violations.

*Bottom line:* All employers should have some form of OHS program.[/learn\_more]

[learn\_more caption="2. Who Must Be Involved in Developing the Program"]

The employer will be the driving force behind development of its OHS program. But the OHS laws typically require employers to consult with the JHSC or health and safety representative when developing such programs. If the workplace is small and so doesn't have a JHSC or health and safety representative, consult with the workers directly in the development of your OHS program.[/learn\_more]

[learn\_more caption="3. What Should the Program Include"]

Most OHS laws spell out exactly what an OHS program must cover or include. Although the requirements vary slightly by jurisdiction, the common required elements of an OHS program are:

- A statement of the employer's policy with respect to the protection of the safety and health of workers at the workplace (see the box at the end for an explanation of the difference between an OHS policy and OHS program);
- A statement of the responsibilities of the employer, supervisors, workers and the JHSC/health and safety representative;
- Provision for the establishment and continued operation of a JHSC (if required);
- Provision for the regular inspection of the premises, equipment and work practices, at appropriate intervals;
- The identification of existing and potential hazards in the workplace and the measures that'll be taken to reduce, eliminate or control those hazards;
- An emergency response plan, including procedures to be followed in an emergency and identification of the internal and external resources, including personnel and equipment, that may be required to respond to an emergency at the workplace;
- Written safe work procedures appropriate to the hazards, equipment and work activity in the workplace;
- A plan for the control of any hazardous substance used, produced, stored or disposed of in the workplace;
- Procedures for the investigation of incidents, near misses and work refusals;
- A strategy for worker participation in OHS activities, including inspections, incident investigations and investigations of near misses and refusals;
- A record management system that includes reports on worker training,

incident and injury statistics, work procedures, health and safety inspections, maintenance, follow-up and investigations;

- Provision for the instruction, training and supervision of workers in the safe performance of their work;
- A system to ensure that the employer's contractors comply with the OHS program and the OHS laws; and
- A procedure for reviewing and revising the OHS program (discussed more below).[/learn\_more]

[learn\_more caption="4. How Often Should the Program Be Reviewed'"]

Most jurisdictions require employers to review their OHS programs regularly to assess the program's effectiveness and make any necessary updates. How often such reviews must be conducted ranges from annually to at least every three years. In addition, you may also need to review your OHS program when:

- There's been a change in conditions in the workplace with respect to safety hazards; and
- New information about a hazard in the workplace becomes available to you.

As a good baseline standard, consider following federal OHS law, which requires OHS program reviews to be based on the following documents and information:

- Conditions related to the workplace and activities of the employees;
- Any workplace inspection reports;
- Any incident investigation reports;
- Any safety audits;
- First aid records and any injury statistics, including records and statistics relating to ergonomics-related first aid and injuries;
- Any observations of the JHSC or the health and safety representative on the program's effectiveness; and
- Any other relevant information.

Be sure to document your assessment of the OHS program and make any necessary changes or updates based on the results of your assessment, such as including new safe work procedures for newly identified safety hazards.

**ONLINE TOOL:** At [OHSInsider.com](https://www.ohsinsider.com), you can download and adapt an [OHS Program Review Checklist](#) for use in assessing your OHS program. [/learn\_more]

[learn\_more caption="5. To Whom Should the Program Be Available'"]

OHS programs *must* be in writing. In general, you must make copies of the program available upon request to the JHSC, health and safety representative, workers and OHS officials.[/learn\_more]

### **BOTTOM LINE**

The purpose of an OHS program is to prevent workplace injuries and fatalities, and occupational illnesses. Having an effective OHS program is the single most important step you can take towards ensuring the health and safety of your workers. Developing and implementing such a program is required by not only OHS law but also basic principles of due diligence. And failing to have an OHS program may result in injuries and fatalities as well as liability for safety offences. So ensure that your company has a formal, written OHS program that

complies with the requirements of your jurisdiction's OHS law and effectively addresses the hazards, activities and equipment in your workplace.

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### **OHS Program v. OHS Policy**

When reviewing the OHS laws, you may see references to both OHS programs and OHS policies. Although some may use these terms interchangeably, they're actually quite different.

An **OHS policy** is a written expression of principles relating to workplace health and safety. It's basically a statement by senior management expressing the company's commitment to protect the health and safety of its workers. An OHS policy may also cover other topics, such as who within the company is responsible for various safety-related functions.

As explained in this piece, an **OHS program** is much more extensive than an OHS policy. It's a comprehensive, formal system designed to identify and eliminate hazards in a workplace. And in fact, some jurisdictions require an OHS program to include an OHS policy statement that's posted or available at the workplace.[/box]