

Does OHS Training Have to Be Multilingual?



As the global labour shortage deepens and Canada becomes increasingly reliant on immigrants, the workforce is becoming populated by workers who speak diverse languages. While English and French (we'll refer to the dominant languages collectively as 'English') remain the country's majority languages by far, according to 2021 census data, 21.4% of Canadians (7.8 million people) speak a different language and over 25% of these people use that other language at work. Those percentages will continue to grow steadily in the years ahead. All of this has direct and significant ramifications for your OHS program. Simply stated, if you currently provide required safety training and information in English, your workers may not understand it. How does this affect your liability under OHS laws and how can you address the problem? This analysis will furnish some answers.

Foreign Workers Are More Likely to Suffer Work Injuries

Before getting into the compliance issues, recognize that foreign born workers are twice as likely to suffer work-related injuries as Canadian-born workers, according to an Institute for Work and Health study. In the US, Hispanics consistently suffer fatal and serious work injuries at significantly higher rates than their American counterparts. While Canada doesn't keep such statistics, anecdotal evidence suggests that Hispanic workers in Canada are also abnormally susceptible to work injury.

Of course, this vulnerability extends to just about all foreign nationalities. One reason that foreign workers suffer work injuries at disproportionate rates is that they're frequently hired for 'precarious' jobs where the work is hazardous, the workload is high, the wages are low and the conditions are stressful. Another key factor is the inability to speak and/or comprehend English, which interferes with foreign workers' safety training, supervision and

capacity to communicate with supervisors and co-workers.

This combination of circumstances sometimes results in tragedy like the one that occurred at an Alberta oilsands project in April 2007, when 2 Chinese workers were killed after the roof of the oil storage tank they were constructing collapsed on top of them. Four other Chinese workers were also injured. The victims had been in Canada for only a year and didn't speak English. They were ordered to carry out a makeshift erection procedure aimed at assembling the tank wall and roof structure at the same time, rather than erecting the walls first as dictated by safety protocols. They received no formal training, only verbal instructions which might not have even been in Chinese. The result was a \$1.5 million fine against SSEC Canada Ltd., at the time the highest OHS fine ever imposed on an employer in Alberta.

OHS Laws & the Language of Safety Training

Under Canadian OHS laws, all workers are entitled to receive training, instruction and supervision in the health and safety hazards they face on the job. Employers are generally responsible for ensuring that workers understand and are capable of applying their training. However, the OHS laws don't say anything about the language of training. More precisely, they don't expressly require that safety training be translated into the language that the workers who receive it actually speak.

The closest thing to such a rule is contained in the federal *Canada Labour Code*, which requires that workers with a 'special need' receive required safety training and information 'by any method of communication that readily permits' them to receive it, including braille, large print, audio tape, computer disk, sign language and verbal communication. While designed to protect individuals with disabilities, the term 'special need' is defined broadly as including any 'condition that impairs' a person's ability to receive the required training delivered by conventional methods that would be adequate for other workers. On its face, 'special need' would include the inability of a worker to comprehend the language in which safety training is delivered.

There are also some limited exceptions where OHS regulations do actually address language issues.

Language-Specific Safety Requirements Contained in OHS Laws

Jurisdiction	Language-Specific Safety Rule
Federal	WHMIS: SDS must be in both French and English (<i>OHS Regs.</i> , Sec. 10.34(1))
British Columbia	WorkSafeBC guidelines say that education and training material relating to exposure control plans for biological agents required by Part of the OHS regs. must be appropriate to the educational level, literacy, and language of workers.
Manitoba	WHMIS: Employer must ensure that supplier label of a laboratory sample subject to labelling exemption under <i>Hazardous Products Regulations</i> contains following statement in both English and French: "Hazardous Laboratory Sample. For hazard information or in an emergency, call," followed by an emergency telephone number (<i>WSH Regs.</i> , Sec. 35.12)

Jurisdiction	Language-Specific Safety Rule
Ontario	<p>*Employer must post Act and workers' rights, responsibilities and duties materials in English and 'majority language' of workplace (<i>OHS Act</i>, Sec. 25(2)(i))</p> <p>*WHMIS: Hazardous material identifications, SDSs and notices of hazardous physical agents must be in English and such other language(s) as may be prescribed (<i>Act</i>, Secs. 37(1)(c) and 41.(4))</p> <p>*Const: Employers must provide adequate written and oral instructions and/or training in language that worker understands to workers who set up or remove certain measures on or by roadways, who direct vehicular traffic and who serve as signalers (<i>Const. Projects</i>, respectively, Secs. 67(6)(c), 69(4)(d) and 106(1.5))</p> <p>*Mines: Supervisors, deck attendants, shaft conveyance attendants and mine hoist operators must be capable of communicating effectively in English (<i>Mines & Mining Plants</i>)</p>
Qu�bec	<p>WHMIS/SIMDUT: Hazardous product used, stored or handled in the workplace must have an SDS and WHMIS label in French'employer may but isn't required to translate the SDS or label into other languages (<i>OHS Act</i>, Sec. 62.4)</p> <p>* Employer or contractor must ensure all work performed underground or in an open pit mine is supervised by a direct supervisor who, among other things, has adequate knowledge of the language normally used at the mine (<i>Mines Regs.</i>, 2018, Sec. 4-2(c))</p>
Saskatchewan	<p>*No person may act as a hoist operator, and no employer or contractor may require or permit a person to act as a hoist operator, unless, among other things, the person has adequate knowledge of the language normally used at the mine (<i>Mines Regs.</i>, 2018, Sec. 10-76(d))</p> <p>*No person may conduct a blasting operation, and no employer or contractor may require or permit a person to conduct a blasting operation, unless, among other things, the person has adequate knowledge of the language normally used at the mine (<i>Mines Regs.</i>, 2018, Sec. 11-32(d))</p>
Yukon	<p>Every person employed as a supervisor and every person supervising the work of other workers must be able to communicate effectively in the language commonly used in the mine or project (<i>WSC Regs.</i>, Sec. 15.10(2))</p>

Implied Duty to Ensure Workers Under Safety Training

The solution to this problem would be to require OHS training to be in a worker's native language if they can't fully understand the training you currently provide. The OHS laws may not expressly say that safety training must be multilingual but they do imply it. **Explanation:** The spirit and intent of OHS laws is to ensure that workers aren't exposed to hazards unless and until they're fully notified of the dangers and how to protect themselves. The right to refusal is the ultimate backstop to which workers can resort when they feel they're not being adequately protected. There are at least 3 sources of an implied duty to provide safety training and information in a language other than English when necessary to ensure its effectiveness.

1. OHS Training Requirements

The requirement under OHS laws is not to provide safety training but 'adequate'

or 'appropriate' safety training that's both comprehensible and suited to the particular hazards or circumstances of the workplace. To meet this requirement, employers must not only simply deliver safety training but also verify its effectiveness. In fact, the OHS laws of at least 4 jurisdictions'Alberta, Saskatchewan, Northwest Territories and Nunavut'define 'training' as including both:

- Providing information and explanation about a subject matter; and
- Requiring a 'practical demonstration' that the worker actually acquired the knowledge or skill the information and explanation was meant to convey.

2. OHS Safety Information Requirements

OHS laws also require employers to give workers certain health and safety information, e.g., the WHMIS obligation to furnish an SDS listing important health and safety information about hazardous products to which workers are exposed. As with safety training, required safety information must be clear and comprehensible.

3. The Duty to Show Due Diligence

If you're ever prosecuted for an OHS violation, failure to ensure that your safety training and information is comprehensible *and* comprehended undermines any shot at a due diligence defence, i.e., proving that you took all reasonable steps to comply and prevent the violation. **Example:** Simply handing safety manuals to new workers and telling them to read the materials was inadequate and relied too much on workers' experience said an Alberta court in ruling against an oil company's due diligence defence [*R v. Dial Oilfield Services*, 2007 ABPC 16 (CanLII)].

Take 5 Steps to Ensure Compliance with OHS Training Requirements for Foreign Workers

As OHS director, your primary responsibility is to ensure that all workers get safety training and information that they can readily understand. Here are 5 ways to fulfill that mission:

Step 1. Determine Languages Used in Workplace

First, determine the languages your workers understand so you can tailor your training efforts accordingly. Thus, while English and French should work for most workers, if a worker speaks only Mandarin, you better deliver the training in Mandarin or in some other format the worker can comprehend before sending him off to do the job.

Step 2. Determine Workers' Ability to Comprehend Your Current OHS Training

Even if the OHS laws don't mention language, deliberately providing training in English to a worker that you know doesn't speak or understand a word of the language would clearly violate the spirit, policy and intent of the law. However, the issue tends to be more subtle. Thus, many foreign workers capable of conversing in and comprehending some degree of English can't fully absorb

English language safety training, particularly when it includes jargon, technical and other complex terms that aren't part of everyday usage. The problem is that employers and even the workers themselves might not recognize these gaps in comprehension until it's too late. So, take nothing for granted and verify that foreign workers whose native language isn't English understand the English language training they've received.

Step 3. Use Pictograms Where Possible

One way to cross language barriers is to do it visually by using pictograms to provide safety information. A pictogram is a graphic symbol or picture that represents an idea. Effective pictograms are simple and easily understood by workers. WHMIS warning labels are good examples of pictogram use. Be aware that pictograms may have to accommodate cultural differences. Thus, for example, non-Western countries use the red crescent moon rather than a red cross as the symbol for first aid.

Step 4. Have Translators Provide Information Verbally

There's some information that simply can't be provided using pictograms, e.g., the workers' right to refuse dangerous work. For such information, you may need translators who are fluent in the applicable languages verbally translate that information for workers. You can either use outside translators or in-house workers or supervisors who are fluent in the relevant languages.

Step 5. Translate Required Safety Information into Relevant Languages

Using pictograms and verbal translations are good first steps. But there's some information that's so important that workers should have it in writing. Also, the OHS laws may require you to provide certain safety information in writing, whether it's handed out to workers or posted in the workplace. So, you'll have to provide such information in the language used in the workplace. You may be able to get some written safety material in languages other than English and French from your jurisdiction's workers' comp board or OHS agency. For example, the Ontario WSIB has safety fact sheets in languages such as Chinese, Italian, Korean, Polish, Portuguese, Punjabi, Russian, Spanish and Vietnamese. And WorkSafeBC offers written materials in Chinese, Punjabi, Spanish and Vietnamese. Non-government safety organizations like the Construction Safety Association and the Industrial Accident Prevention Association are also a potential source of multilingual safety materials.