

Does Your JHSC Comply with OHS Law Membership Requirements?



JHSC violations can lead to OHS orders, fines and intensive investigations.

If and when safety inspectors show up at your workplace, one of the first things they'll want to review are the joint health and safety committee (JHSC) logs and records. And, OHS lawyers caution, if the membership numbers and composition aren't right, they'll hit you with OHS orders and fines that may shake the very top levels of your company.

Example: Upon finding that there was no JHSC at the site, Ontario MOL inspectors ordered a building parts manufacturer to establish one and ensure it had at least one worker and one employer certified member. They returned 3 months later to discover that the company still hadn't complied with the order. So, they charged the company and its corporate director with failing to ensure that there was a JHSC [*Syri-Con Corporation*, MOL News Release, May 17, 2006].

In addition to being an offence in itself, JHSC membership violations raise a red flag that invites investigators to dig deeper for more serious OHS violations. According to an Ontario lawyer, 'a JHSC violation is like blood in the water for hungry sharks.'

Do You Comply with JHSC Member Requirements'

There are 2 sources you must check to audit your own compliance with JHSC membership rules:

- Your jurisdiction's OHS Act; and
- If your workforce is unionized, the terms of your collective agreement.

Explanation: The OHS JHSC membership laws are baseline or minimum requirements. Unions may also seek JHSC provisions that are more favourable to their workers. For example, instead of the 50% required by OHS laws, unions may demand that 66% of JHSC members represent workers.

Do a 4-Point JHSC Member Compliance Audit

There are 4 things you need to check when delving into the OHS law requirements and collective agreements:

1. Does Your JHSC Have the Proper Number of Members'

Seven jurisdictions (AB, NB, NS, NT, NU, PEI, QC) leave it to the employer and workers to decide how many members the JHSC should have. Québec includes default numbers in case the sides don't come to an agreement. The other 7 jurisdictions also offer leeway but also set parameters:

- **Minimum:** Three jurisdictions (Fed, BC, ON) stipulate the minimum number of members a JHSC can have. In Ontario, the minimum is pegged to the number of workers at the site² for workplaces with fewer than 50 workers and 4 for workplaces of 50 or more; and
- **Range:** In Manitoba, Newfoundland, Saskatchewan and Yukon, there's both a minimum and maximum either 2 or 4 to 12 members.

2. Does the JHSC Have the Right Composition of Members'

The 'J' in 'JHSC' is there for a reason. The committee must be a joint undertaking composed of employer and worker members working together to ensure safety at the site. Recognizing where the balance of power typically lies, the OHS laws mandate that the number of worker members be at least equal to the number of employer members to ensure independence. All but 5 jurisdictions (AB, NB, NT, NU, PEI) allow for workers to have more than half of the committee seats.

Compliance Strategy: In doing your review, focus not just on the number of JHSC members but whom they represent. Unfortunately, that may not be as simple as it sounds.

Consider Function, Not Title: Individuals may be deemed employer members even if they're not called that and don't have a management title. The acid test isn't what the person is called but the functions the he/she performs. Managerial functions typically include the authority to hire, fire, discipline or recommend any of the above.

Company Can't Influence Selection of Worker Members: Only workers or unions are allowed to choose the worker members of the JHSC. Selection may be by open vote, secret ballot or appointment, depending on whether the workers are represented by a union. Management isn't allowed to influence the selection or suggest, let alone force, a worker member to resign, even if the motive for wielding influence is a sincere desire to promote safety rather than dominate the JHSC.

Union Can Control Selection of Worker Members: While management can't meddle in the process, most jurisdictions allow the workers' unions to control election of worker members. This is true even if not all the workers in the workplace are in the union. In most of the provinces, unions can control elections of worker representatives to the JHSC even if it doesn't represent all of the non-managerial workers in the workplace.

3. Does the JHSC Have the Required Co-Chairs'

A JHSC must have 2 co-chairs, 1 chosen by and representing workers and the other chosen by and representing management. **Exception:** PEI doesn't have specific rules for JHSC chairs, which allows committees to decide this for themselves.

4. Are All JHSC Members Properly Qualified'

The last thing to verify is whether all members serving on your JHSC, both employer and worker, have the qualifications required under OHS laws:

- Individuals who exercise management functions can't serve as worker members;
- BC, Manitoba, Newfoundland, Nova Scotia and Ontario state that members of the JHSC must come from the same workplace as the workers they represent, which means that they can't serve on the JHSC when their employment at the particular site ends; and
- Many jurisdictions require JHSC members to be trained, at the employer's expense, to perform their roles. In Ontario, at least one worker and one employer JHSC member be certified.

Takeaway

As with any other committee, a JHSC is only as effective as the sum total of the skills, energy and commitment of the individuals who make up its membership. There's no guaranteed formula for picking the right members for a JHSC. But make no mistake. There are laws determining how many members a JHSC can have, where those members must come from and what qualifications they must possess. Ensuring your JHSC membership meets these requirements is an important first step in working with committees.