

Workers' Rights to Participate in a Govt. OHS Inspection of Their Workplace



OHS laws typically provide for a worker to accompany a government OHS inspector during an official workplace inspection. But there are significant differences by jurisdiction in terms of:

- Whether having an accompanying worker is required or simply permitted;
- How many workers will do the accompanying; and
- Which workers are eligible to accompany the inspector, i.e., does worker have to be a joint health and safety committee (JHSC) member (or a health and safety representative (HSR) if there's no JHSC at the workplace).

The employer must let the worker required or chosen to accompany the govt. inspector participate in the inspection without reprisal or loss of pay.

Who Must/May Accompany Govt. Inspectors During a Workplace Inspection'

FEDERAL: Govt. inspectors **may** require the employer or an employee or a person that the employer or employee designates to accompany them while they're in the workplace [*Canada Labour Code*, Sec. 141(1)(j)].

ALBERTA: Govt. inspector **may** ask the JHSC co-chairs, the designates of the co-chairs or the HSR to be present at the inspection [*OHS Act*, Sec. 25].

BC: The employer (or an employer representative) and a worker representative that's "reasonably available" **may** accompany a govt. inspector on an inspection. A worker representative isn't considered "reasonably available" if the employer objects that his/her participation in the inspection would "unduly impede production". But the employer only gets to exercise this veto for one worker. Meanwhile, the workers get to select another worker as their representative for purposes of participating in the inspection [*Workers' Comp Act*, Sec. 182].

MANITOBA: Govt. official carrying out inspection or investigation **may** request to be accompanied by:

- The JHSC worker co-chair or his/her designate;
- The HSR if there's no JHSC;
- A worker selected by the union if there's no JHSC or HSR; or

- A worker that doesn't represent management if there's no JHSC, HSR or union.

[*Workplace Safety & Health Act*, Sec. 41.3]

NEW BRUNSWICK: Govt. inspector **must be** accompanied by a JHSC employee and employer member, or a representative of each group where there's no JHSC or an employee and employer JHSC member aren't available [*OHS Act*, Sec. 29].

NEWFOUNDLAND: The following people **have the right** to accompany a govt. inspector during an official inspection:

- A representative of the employer; and
- The JHSC worker members, the HSR if there's no JHSC or the workplace health and safety designate if there's no JHSC or HSR and the designate isn't the employer.

[*OHS Regs.*, Sec. 25]

NOVA SCOTIA: During a govt. inspection, the employer:

- **Must** give JHSC employee member or HSR an opportunity to accompany inspector; and
- **May** have its own representative accompany the inspector;

If there's no JHSC employee member or HSR available, the inspector may choose one or more employees to accompany him/her [*OHS Act*, Sec. 50].

ONTARIO: Employer **must** give one of the following an opportunity to follow an MOL inspector during the physical part of the inspection:

- A JHSC worker member, if there's a JHSC;
- The HSR, if any;
- If there's no JHSC or HSR, a worker selected by the union because of knowledge, experience and training to represent the workers; or
- If there's no JHSC, HSR or union, a worker selected by the workers because of knowledge, experience and training to represent them.

[*OHS Act*, Sec. 54]

PRINCE EDWARD ISLAND: Employer or person in charge of workplace **must** designate a management representative and give a JHSC worker member or HSR the opportunity to accompany the govt. inspector during the inspection [*OHS Act*, Sec. 7(5)].

QUÉBEC: Duties of HSR include accompanying govt. inspectors during an inspection. Note: This is **not** one of the express duties of a JHSC member [*Health & safety, act respecting*, Sec. 90].

SASKATCHEWAN: Neither *Sask. Employment Act* nor *OHS Regs.* specify who, if anyone, may accompany a govt. inspector during an OHS inspection.

NORTHWEST TERRITORIES/NUNAVUT: Employer **must** give one of the following an opportunity to accompany a govt. inspector during an inspection:

- A JHSC worker member or another worker designated by the JHSC to represent workers if the worker member isn't available;

- The HSR or another worker designated by the HSR to represent workers if the HSR isn't available;
- If there's no JHSC worker or HSR available, a worker selected by the union to represent workers; or
- If there's no JHSC, HSR or union, a worker that the govt. inspector selects.

[OHS Regs., Sec. 19].

YUKON: Employer **must** give one of the following an opportunity to accompany a govt. inspector during an inspection:

- A JHSC worker member;
- The HSR;
- If there's no JHSC worker or HSR, a worker selected by the union to represent workers; or
- If there's no JHSC, HSR or union, a worker that the workers select to represent them.

[OHS Act, Sec. 34]