

Minimizing Liability Risks When Rejecting Unrealistic JHSC Recommendations – Compliance Game Plan



Rejecting, or even worse, ignoring JHSC recommendations is a liability risk.

In addition to being required by OHS laws, having a joint health and safety committee or health and safety representative at your workplace (which we'll refer to collectively as a 'JHSC') can make an important contribution to safety by identifying and recommending measures to correct hazards. But what if the JHSC gets carried away and recommends measures that are overly ambitious and unrealistic, such as large-scale engineering systems to eliminate relatively minor hazards'

No company can afford to let its JHSC have a blank cheque. On the other hand, a company that rejects or, worse, ignores JHSC recommendations runs the risk of being second-guessed. The unheeded JHSC recommendation may become a smoking gun that exposes the company and senior officials to significant penalties'especially for injuries that following the recommendation might have prevented. Here's a 5-step compliance gameplan for avoiding this dilemma.

The Law of JHSC Recommendations

JHSC recommendations are just that. But while accepting recommendations isn't mandatory, the following activities are:

Step 1. Consider All JHSC Recommendations You Receive

There's a big difference between rejecting a JHSC recommendation and ignoring it. The former may be perfectly acceptable; the latter is not.

of all but 4 provinces (AB, NB, QC, SK) specify when and how employers must respond to JHSC recommendations (that also includes recommendations from a JHSC co-chair in ON and MB). Qualifications may apply. Thus, in NS and PEI, the duty to respond applies only to written recommendations; moreover, in NS, the written recommendation must also be accompanied by a written request for a response.

The stakes are high. Five provinces (BC, MB, NS, PEI, SK) give the JHSC the

right (and in some cases, the duty) to notify a government OHS officer if it's dissatisfied with the response or thinks the employer is stonewalling. Ignoring a JHSC recommendation also violates the employer's duty to cooperate with the JHSC that applies in all parts of the country.

Ignoring a JHSC recommendation also dooms any hope of a due diligence defence if the hazard addressed results in an incident. **Explanation:** Due diligence requires you to take all reasonable steps to guard against reasonably foreseeable risks. The existence of a JHSC recommendation is evidence that the hazard was reasonably foreseeable and that you were on notice of its existence.

Step 2. Put Your Response in Writing

Nine jurisdictions (FED, BC, MB, NL, NS, ON, PEI, NT, NU) require employers to not only respond to JHSC recommendations but do so in writing. **Best Practice:** Always respond to a JHSC recommendation in writing even if your province doesn't expressly require it. This will serve 3 purposes:

Maintaining Positive JHSC Relations: The benefits of a written response apply even when and perhaps especially when you reject a JHSC recommendation because you consider it unrealistic. While some employers fear that sending a rejection notice in writing will provoke a confrontation with the JHSC, just the opposite is true, according to a veteran Alberta OHS coordinator. 'Although they may not like the message, most committee members appreciate employers who are frank and open,' he counsels.

Avoiding Government Intervention: Communicating in writing increases transparency and makes the JHSC and its co-chairs and members less likely to exercise their rights to complain to government OHS officers.

Documenting Compliance: A written response documents that you took the recommendation seriously and made a deliberate decision about accepting it.

Step 3. Respond by Deadline

You must respond promptly after receiving the JHSC recommendation. Most jurisdictions specify a response deadline:

Table 1. JHSC Recommendation Response Deadlines

Within 30 days	Within 21 days	As soon as reasonably possible	Within a reasonable time
FED, MB, NL, PEI	BC, NS, ON	NT, NU	YK

Step 4. Include the Right Information in Your Response

The response must indicate your decision to accept or reject the recommendation:

If you accept the recommendation, list the timetable for implementation. This is mandatory under federal law and in Manitoba and Ontario, and advisable for optimizing transparency and JHSC communication in all jurisdictions.

If you reject the recommendation, list the reasons why you disagree with it. Best Practice for rejecting JHSC recommendations dictates going beyond the legally required OHS minimum by:

- Describing what you did to consider the recommendation including details like when deliberations were held, how long they lasted and who participated in them (Template, Part C);
- Stating your decision (Template, Part B);
- Explaining the specific reasons for rejecting the recommendation (Template, Part D); and
- List any alternative safety measures you're using or are prepared to consider to achieve the safety objective of the JHSC recommendation (Template, Part E).

Step 5. List Reasons for Any Delay in Responding to Recommendation

Three provinces' BC, NS, PEI' provide a third option besides accepting or rejecting a recommendation: temporarily delaying a response. However, employers must provide the JHSC written notification of the delay by the response deadline (21 days in BC and 30 days in NS and PEI), listing why it's not reasonably possible to make a decision within the deadline and when they expect the final decision to be made. Employers must then make and send the committee written notice of the final decision as soon as reasonably practicable.

Strategic Pointer: Delaying final decision on the JHSC recommendation is risky because the JHSC is required to promptly notify a government OHS officer of the delay; in BC, the JHSC has the option to notify the Board of delays.