

# Must the JHSC Pre-approve Employer's PPE Rules?



## Situation

An employer imposes a new safety rule that requires workers to wear chin straps attached to their safety headgear. The OHS law in the jurisdiction doesn't require the use of chin straps but the employer believes the rule is an appropriate measure necessary for workers' health and safety. The collective agreement states that if the JHSC requires the use of certain PPE, the employer must provide it. The employer didn't consult with the JHSC or get its consent before imposing this rule. So the union claims that the rule is invalid, arguing that the employer can only introduce PPE that's been approved by the JHSC or is specifically required by law.

## Question

**Is the new PPE rule invalid'**

- A. Yes, because it exceeds the requirements in the OHS laws.
- B. Yes, because the JHSC didn't consent to the rule before it was imposed.
- C. No, because JHSCs have no legal authority to impose or object to PPE rules.
- D. No, because employers have the duty and power under the OHS law to require workers to use appropriate PPE.

## ANSWER

**D. The OHS laws impose a duty on employers to take reasonable steps to protect workers, including requiring them to use appropriate PPE.**

## EXPLANATION

This scenario is based on an Ontario case in which an arbitrator ruled that, under the OHS law and the collective agreement, the employer had the authority to require the use of PPE without the JHSC's consent. Although responsibility for workplace safety is shared by all stakeholders under the OHS laws, primary

responsibility for ensuring a safe workplace is placed on employers. And to fulfill that duty, the OHS laws give an employer broad power to take the steps necessary to protect workers' health and safety—including the authority to require them to use the PPE it deems necessary.

In addition, although the collective agreement gave the JHSC the power to compel the employer to provide the PPE it requires workers to use, this language doesn't mean the JHSC has *sole* control over PPE rules or that the employer's PPE duties have been delegated to the JHSC. In fact, the arbitrator said that such a delegation would violate the OHS law. *Bottom line*: The union's claim that the JHSC essentially has veto power over PPE rules is inconsistent with the employer's duties under the OSH law. And the arbitrator added that the union's position could lead to an "absurd result" in which the employer is prevented by the JHSC from fulfilling its duties under the OHS laws and then is successfully prosecuted for a safety violation over which it had no control.

### **WHY WRONG ANSWERS ARE WRONG**

**A is wrong** because the OHS laws merely establish the *minimal* safety standards employers must meet. Employers can impose stricter safety rules or requirements that are more protective of workers than those imposed by the OHS laws. For example, say a jurisdiction requires workers to wear fall protection when working at or above three metres. An employer could require workers to use fall protection when working above two metres—but it couldn't require them to use such PPE only when working above four metres. Here, even though the OHS law doesn't require the use of chin straps on safety headgear, the employer can still require workers to use such straps because this rule is more protective of workers than the law's minimal standard.

**B is wrong** because an employer doesn't need a JHSC's consent or approval before imposing a rule designed to protect workers' health and safety. Ideally, an employer and JHSC should work together to determine the appropriate safety rules for the workplace. But a JHSC doesn't have veto power over safety or PPE rules. Rather, the OHS laws require *employers* to take reasonable steps to protect workers, including requiring them to wear appropriate PPE.

**C is wrong** because the JHSC *could* have some legal authority over PPE rules. For example, under the OHS laws, if the JHSC recommends the use of certain PPE, the employer must seriously consider that recommendation and follow the designated procedure for responding to such recommendations. And a collective agreement, such as the one in this scenario, can give a JHSC some power over PPE rules. But that agreement can't contradict or undermine the legal duties and powers given to employers under the OHS laws.

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*Gerda Ameristeel (Whitby Plant) v. United Steelworkers, Local 6571*, [2012] CanLII 41114 (ON LA), July 19, 2012