New Canadian OHS Laws Scorecard 2023



This is the time of year when CEOs, CFOs and other company executives and directors look to their OHS coordinators for a briefing on the current state of OHS laws and the significant changes that occurred during the past 12 months, as well as the key new regulatory requirements slated to take effect in the year ahead. In fact, there's a lot to talk about this year. New OHS lawmaking was unusually heavy in 2023, both in terms of volume and significance—at least in most jurisdictions. To help you prepare your CEO compliance briefing here's a high-level summary of the key new OHS laws across Canada.

Federal Jurisdiction

New ELD Requirements for Commercial Vehicles: On the first day of the new year, new federal *Commercial Vehicle Drivers Hours of Service Regulations* requiring operators of commercial bus and trucking companies that cross provincial/territorial lines to have an electronic logging device (ELD) installed in their vehicles to accurately record drivers' driving time. Spawned by the Humboldt Broncos bus tragedy caused by fatigued driving, the new ELD rules, which the provinces and territories incorporated into their own traffic safety regulations during the year, are intended to document that companies are complying with maximum hours restrictions designed to prevent driver fatigue. New regulations allowing

the government to issue administrative monetary penalties (AMPs) for drivers' hours of service violations also took effect in July.

New Age Restrictions for Young Workers: Revised *Canada Labour Standards* regulations increasing the age at which children can't do certain kinds of work from under 17 to under 18 took effect in March. They also raise the ban on letting an employee work between 11 p.m. to 6 a.m. the following day from age 17 to 18. **Action Point:** Implement a new and young workers safety game plan at your workplace to ensure compliance with the new rules and keep young workers safe.

New WHMIS Requirements: Significant changes to WHMIS requirements officially took effect across Canada on April 4, 2023. While you don't have to comply with them until January 4, 2026, OHS coordinators need to ensure that they and their companies know about and have a game plan to comply with them before the 2026 deadline. **Action Point:** Go to the OHS Insider site for a complete briefing on what you need to know about the new WHMIS requirements.

New Workplace Hygiene Rules: Toilets, occupational hygiene and gender considerations were a common theme for new OHS regulations this year. New *Canada Labour Code* regulations published in the spring require employers to furnish clean and hygienic tampons and menstrual pads in each toilet room, along with a covered container for their disposal. If it's not feasible to provide these items in a toilet room, the employer must provide them at another location in the same workplace that's accessible to employees at all times that offers a "reasonable amount of privacy."

New TDGR Client Database: This fall, new Transportation of Dangerous Goods Regulations (TDGR) took effect requiring truck, shipping, railway and other operations to enter TDGR information about their sites and the dangerous goods they transport and handle into a new federal Client Identification

Database and update the information annually or risk penalties and criminal prosecution for noncompliance.

Alberta

A few years ago, Alberta initiated a long overdue overhaul of its OHS laws. But this year was considerably more quiet with the most significant changes taking place in March 31 when a series of technical revisions to the *OHS Code* took effect, including changes:

- For controlling hazardous energy clarifying who's responsible for different aspects of the lockout process;
- For workplace first aid training, the contents of first aid kits and first aid recording and reporting;
- On confined space entry, including allowing for use of remote confined space entry monitoring systems;
- That require inspections of a roofer's hoist "at reasonably practicable intervals," rather than daily to give employers more flexibility; and
- Reducing the threshold for when employers must perform a workplace noise exposure assessment from 85 decibels (dBA) to 82 dBA.

British Columbia

No province adopted more significant new OHS laws in 2023 than BC.

Workers Comp Return to Work Requirements: The fireworks actually began in November 2022 when BC passed workers comp reform legislation (Bill 41) requiring employers to re-employ injured workers. The new laws, which take effect on January 1, 2024, also require employers and injured workers must cooperate in return to work and WorkSafeBC can issue AMPs against employers for violating their cooperation or return to

work duties. The law also bans employers from discouraging workers from filing workers comp claims. **Action Point:** Go to the OHS Insider website for a complete briefing on the Bill 41 workers comp changes and how to comply with them.

Asbestos Licensing Requirements: Under new legislation passed this spring, BC will become the first province to require contractors to get a licence to conduct asbestos abatement work. The rules take effect on January 1, 2024 but WorkSafeBC began accepting licence applications in September.

Workplace Violence Changes in the Pipeline: BC was one of the first provinces to add specific workplace violence requirements to its OHS regulations; but it hasn't revised those original rules in over a decade. OHS coordinators in BC should prepare for major changes in 2024. This fall, WorkSafeBC held public consultations on proposed changes, including:

- A broad new combined definition of violence and harassment as conduct reasonably expected to intimidate, humiliate, offend or cause physical or psychological harm to a worker;
- A new employer duty to implement a violence and harassment prevention program, which most provinces already require;
- A new obligation on employers to implement an internal process to resolve incidents without an investigation when the accused is somebody from within the organization; and
- New incident investigation requirements.

Manitoba

Manitoba passed 2 fairly significant pieces of workplace health and safety legislation in 2023:

- Bill 227, amending the *WSH Act* to require owners of a

workplace to ensure delivery personnel access to washroom facilities has taken effect, except where access would require going through a dwelling or the owner can show that granting access would constitute an undue hardship or danger; and
- Bill 25, extending the *Workers Comp Act* presumption that specific heart injuries and cancers suffered by firefighters are work-related to wildfire firefighters.

The Maritime Provinces

There wasn't a lot of new law making in the Maritimes in 2023. Here are the highlights of an otherwise quiet year.

New Brunswick passed legislation to beef up protection against drowning for workers in the province's vital fisheries industry. Specifically, Bill 11 amends the *OHS Act* to require workers on fishing vessels to wear life jackets and personal flotation devices. It also clarifies that fishing vessels are a "place of employment" where PPE must be worn—at all times when the vessel doesn't have a deck or deck structure.

Newfoundland made a small but significant tweak to its OHS safety committee requirements. Previously, the *OHS Act* required employers with 10 or more workers at a workplace to: i. implement OHS programs; ii. adopt OHS policies; iii. establish OHS Committees (or health and safety representatives if they have fewer than 10 workers); and iv. pay for Committee co-chair certification training. New legislation (Bill 41) increases that threshold number to 20.

Nova Scotia passed significant legislation (Bill 332) expanding the scope of workers comp coverage of mental stress and PTSD to gradual onset of traumatic mental stress due to work-related stressors. Previous rules limited coverage to acute mental stress caused by discrete traumatic events that happen at work, like witnessing a co-worker's death.

In the Pipeline: Look for Nova Scotia to adopt sweeping changes to its *Building Code*, *Fire Safety* regulations and accessibility guidelines designed to make buildings in the province more accessible to individuals with disabilities.

Prince Edward Island passed a law increasing the maximum fine against a "natural person," i.e., an individual as opposed to a corporation, under the *Environmental Protection Act* from $10,000 to $50,000.

Ontario

There were 5 major OHS changes in Ontario in 2023:

Higher OHS Penalties: A provision in a major employment law reform law called the *Working for Workers Act, 2023,* (Bill 79) that passed in September increases the maximum fine for a corporation convicted of an *OHS Act* violation from $1.5 million to $2 million, among the highest in Canada. The move came just one year after Ontario raised maximum OHS fines to $500,000 for individuals and $1.5 million for corporate directors.

New Toilet & Hygiene Rules: Changes to *OHS Construction Project Regulations* requiring that there be at least one women's-only washroom on construction project sites took effect in July. Portable washrooms must also be private, completely enclosed, adequately lit and equipped with a disposal receptacle for sanitary napkins as well as hand sanitizer where running water isn't reasonably possible.

PPE Must Fit Women: The *Construction Project Regulations* changes also address limitations of standard PPE by requiring that PPE and protective clothing be properly fitted to women and workers of diverse sizes and body types.

Mandatory Naloxone Kits at Construction Projects: New rules requiring employers to keep naloxone kits at workplaces at high risk of opiate drug overdoses to guard against the risk

of opiate drug overdoses took effect on June 1. **Action Point:** Go to the OHS Insider website for a briefing on the new Ontario naloxone kit laws.

Stronger Airborne Hazards Protections for Mine Workers: On September 1, new *OHS Mines and Mining Plants Regulations* rules took effect, including tougher ventilation and diesel equipment requirements, reduced OELs to elemental carbon found in diesel exhaust, mandatory airborne hazards management programs, new procedures for managing major workplace changes and allowing for use of electronic devices to evaluate certain hazards in underground mines.

In the 2024 Pipeline: After a busy year, Ontario is likely to adopt other significant new OHS regulations next year, including:

- Requirements that employer take measures to guard against wildfire smoke and ensure workers safe outdoor air quality;
- Specific OHS regulations covering heat stress hazards (the obligation to protect workers from heat stress is currently only implied to exist under the OHS Act general duty clause requiring employers to keep the workplace free of known and recognized hazards);
- Rules to ensure safe use of self-erecting tower cranes, that is, cranes that can be erected ancillary equipment, at construction projects; and
- A new regulation would add an item to the list of safety incidents that employers must report to the MOL under (Section 53 of) the *OHS Act*: failure to control a crane or load, including any rigging failure.

Québec

Québec was as active as any province in adopting new safety laws in 2023.

New OHS Requirements for Construction Sites: Effective January 1, 2023, it became mandatory for:

- Project managers at construction sites with at least 20 construction workers present at the same time to form a site committee;
- Principal contractors at construction site where at least 100 construction workers work simultaneously or costs of work exceed $12 million to appoint a health and safety coordinator to monitor safety, perform workplace inspections and investigations and participate in creating and updating the site prevention program; and
- Project managers of construction sites where 10 or more construction workers are expected to be present at the same time to create a prevention program during project planning and, if more than 20 workers are expected to be present, send the prevention program to CNESST before work starts.

New Reassignment Rules for Pregnant Workers: New OHS rules clarifying how health professionals must issue certification of a pregnant or breastfeeding workers need for protective reassignment also took effect on January 1, 2023.

New Protections for Young Workers: In June, the Québec Assembly passed Bill 19 amending the *OHS Act* to require employers to specifically account for workers ages 16 and under when performing hazard assessment and implementing prevention programs or action plans required by OHS laws and regulations. The law also: i. bans employment of children under age 14 except in extraordinary cases; ii. limits children subject to compulsory school attendance to 10 hours of work from Monday to Friday and 17 hours per week; and iii. doubles maximum fines to $1,200 for a first offence and $12,000 for a repeat offence.

Saskatchewan

Fire Safety: In February, Saskatchewan published new Fire Safety regulations to incorporate accessibility requirements contained in the 2015 version of The National Fire Code of Canada and other laws with regard to carbon monoxide and smoke alarms.

Expanded Powers for OHS Inspectors: In May, Saskatchewan passed Bill 91 clarifying that OHS officers have the authority to take photos and recordings when inspecting the workplace and exclude a person from an investigation interview if there's a perceived conflict of interest, in which case the excluded person would nominate a replacement to attend the interview.