

New JHSC Requirements Added to BC's OHS Regulation



A coroner's inquest was held in BC on the deaths of Glenn Roche and Alan Little in the 2012 Prince George mill explosion (the 'Lakeland Inquest'). The coroner issued various recommendations, including recommending an 'audit tool' be implemented to measure the effectiveness of joint committees (JHSCs). On Dec. 14, 2016, WorkSafeBC's Board of Directors approved the addition of new sections to the *OHS Regulation* that implement several of the Lakeland Inquest's recommendations that apply to JHSCs (and health and safety representatives, in some cases). The changes don't take effect until April 3, 2017. But here's an overview of the new sections and their requirements.

THE NEW SECTIONS

Evaluation of JHSC Effectiveness: Sec. 3.26 requires employers to ensure that an evaluation of each of their JHSCs is conducted annually. The purpose of the evaluation is to allow a JHSC, after a year of operation, to examine its effectiveness and think about how to improve in subsequent years. This evaluation must be conducted by either:

- The JHSC co-chairs or their designates; or
- The employer or a person retained by the employer, who must get and consider the input of the co-chairs or their designates.

This new section also spells out the minimum topics the evaluation must cover, but the list isn't exhaustive and the evaluation may include additional topics. The evaluation should determine whether the committee is generally in compliance with the OHS laws and then go further to assess its overall effectiveness.

The JHSC must discuss the finished evaluation at its next meeting and may respond to the evaluation using its existing powers and procedures as set out under OHS law. The committee's discussion and the evaluation must be incorporated into the meeting minutes, which are required to be posted in the workplace.

Insider Says: WorkSafeBC plans to make an evaluation tool available online, which can be used by JHSCs to comply with Sec. 3.26. Use of the tool won't be mandatory; other tools can be used as long as they meet or exceed all the requirements for an evaluation, including the requirement for input of the co-

chairs or their designates.

New Member Training: Sec. 3.27 establishes the mandatory minimum training and education requirements for *new* JHSC members and new worker health and safety representatives. For JHSCs, the minimum training *isn't* required for new members if:

- They used to be on a JHSC in the past;
- They've already received the JHSC training; and
- It has been two years or less since they left the committee.

This section requires new JHSC members selected on or after April 3, 2017 to get at least eight hours of instruction and training as soon as soon as it's reasonably capable of being done but no more than six months after being selected. The six months is an outer time limit that should only be reached in limited circumstances. The requirements allow flexibility regarding delivery methods and don't require the training to occur in one session. Note that the time to do the training is considered 'work' and so the employer must pay for the training.

Sec. 3.27(4) specifies the minimum six topics the mandatory training must cover. The instruction and training may go beyond these topics, which are specific to the duties and functions of a JHSC or worker representative (as opposed to general safety training).

Participation in Incident Investigations: The OHS laws require employers to conduct investigations of certain workplace incidents. Such investigations must be conducted with the 'participation' of the employer or a representative of the employer and a worker representative from the JHSC. Sec. 3.28 clarifies the meaning of 'participation' in this context. Sec. 174(1.1)(c) of the Act lists activities included in participation by worker and employer representatives. In addition to those items listed in that section, Sec. 3.28 says participation by worker and employer representatives also includes assisting the persons carrying out the investigation with:

- Gathering information relating to the investigation;
- Analyzing the information gathered; and
- Identifying any corrective actions necessary to prevent recurrence of similar incidents.

It's important to note that the activities listed in both Sec. 174(1.1) and Sec. 3.28 only set out *some* of the activities 'participation' includes'the meaning of the term isn't limited to the listed activities.

ANALYSIS

Some aspects of the new *OHS Regulation* sections as to JHSCs in BC are already in place in other jurisdictions. For example, most jurisdictions require JHSC members to get training and some specify that *new* members must receive such training within a certain period of time from when they start. But the effectiveness assessment requirement is fairly novel and something that *all* employers in *all* jurisdictions might consider implementing to ensure that their JHSCs are functioning effectively and as designed.