

New Laws: The 6 Biggest OHS Compliance Challenges of 2020



As if maintaining a compliant OHS program weren't already hard enough, legal changes will pose significant compliance new challenges to safety managers in the coming year. Here are the 6 key new laws taking effect in 2020 that you need to prepare for.

1. Strict New Workplace Harassment Requirements

Once the domain of HR, workplace harassment continues to emerge as an OHS issue. Since Jan. 1, 2019, 8 of Canada's 14 jurisdictions have or are in the process of adopting new workplace harassment requirements. There are 2 models:

- **The 6 catch-up jurisdictions:** In NB, NL, PEI and the 3 territories where OHS harassment regulations didn't previously exist, employers are being asked to take the same basic measures required of Ontario employers under what was once called Bill 168 adopted nearly 10 years ago, i.e., harassment codes of practice, complaint mechanisms, investigation and reporting procedures and harassment training;
- **The 2 state-of-the-art jurisdictions:** QC and the federal jurisdiction, where workplace harassment protections already existed, are advancing beyond the Bill 168 model with new requirements for impartial investigation, mediation and dispute resolution, stronger privacy protections and other rights to ensure harassment victims get justice from their employers.

New Workplace Harassment Laws (2019-2020)

Jan. 1, 2019: Bill C-65 takes effect for federally-regulated employers
Jan. 1, 2019: Expanded Bill 176 psychological harassment protections take effect in Québec
March 29, 2019: New WSCC workplace harassment Code of Practice takes effect in Northwest Territories and Nunavut
April 1, 2019: New OHS workplace harassment and violence regulations take effect in New Brunswick
June 30, 2019: Hearings on adding new workplace harassment and violence requirements to OHS regulations end in Yukon
Jan. 1, 2020: New OHS workplace harassment and violence regulations take effect in Newfoundland
Jan. 1, 2020: New standalone workplace harassment regulation takes effect for federally-regulated employers
July 1, 2020: New OHS workplace harassment regulations implementing Bill 42 take effect in PEI

2. Newly Harmonized OHS Rules for PPE, First Aid, Etc.

After years of talk, OHS harmonization has actually begun. In 2019, 6 of the 14 jurisdictions revised their regulations in accordance with nationally agreed-to standards, including MB, NS, Fed, BC, SK and YK. The initial harmonization changes affect PPE, first aid kits, personal flotation devices and high-visibility apparel. The next wave will likely include respiratory protection and noise hazards. Meanwhile, the jurisdictions will continue to work together to identify national standards for future harmonization of other OHS requirements.

3. Provincial OHS Changes

In addition to the workplace violence and harassment and OHS harmonization changes, many provinces made other fairly significant technical changes to their OHS regulations. Highlights:

- **Federal:** New requirement for fall protection plans and clarification of requirements for clearance distance, anchors and full-body harnesses;
- **Alberta:** New rule banning employers from making workers wear high heels or other footwear that may pose health and safety risks;
- **BC:** Revised rules for mobile equipment, traffic control, concrete formwork, blasting operations, fishing vessels, cytotoxic drugs and pesticide restrictive entry intervals;
- **Manitoba:** New workplace impairment rules and relatively minor revisions affecting confined space entry, fixed and portable ladders, noise control and musculoskeletal injuries; and
- **Ontario:** Significant revisions to respiratory protection, temporary stairs at construction sites and smaller changes and clarifications affecting notice of project, eyewash fountains and emergency showers, personal flotation devices, WHMIS and who must take working at heights training.

[Click here](#) for a list of all OHS regulatory changes in each jurisdiction.

4. New Safety Training Requirements for Class 1 & 2 Truck Drivers

It often takes avoidable tragedies to secure the enactment of necessary new safety laws. The most recent example of this principle took place on April 6, 2018, when 16 members of the Humboldt Broncos lost their lives in a bus accident caused by a semi-truck driver's failure to yield at an intersection stop sign. In response, 5 jurisdictions, (including AB, BC, MB, NWT and SK, where the accident occurred) adopted new licensing rules requiring Class 1 and Class 2 semi-truck drivers to successfully complete entry-level safety training.

5. Evolving Rules for Controlling Drugs in the Workplace

In the wake of the 2018 legalization of cannabis, courts continue to issue new rulings clarifying the rules governing drug testing, accommodations and other issues pitting workers' individual rights against employers' need to ensure a

safe workplace. The cases were pretty evenly divided this year, with most of the cases turning on the fairness of the employer's disciplinary and testing procedures. Thus, for example, a Northwest Territories arbitrator reinstated a social welfare worker fired for drinking on the job because the employer didn't ask or consider whether he had an alcoholism-related disability [*Union of Northern Workers v Govt. of the Northwest Territories*, 2019 CanLII 18391 (NT LA), Feb. 19, 2019]. By contrast, a Federal arbitrator upheld the firing of a train engineer who tested positive for cocaine after derailment incident because the employer did consider whether he was addicted and the evidence showed he was just a casual user [*Teamsters Canada Rail Conference v Canadian Pacific Railway*, 2019 CanLII 89682 (CA LA), September 22, 2019]. Other key cases:

Employer Wins

- Alberta tribunal okays firing cement operator for refusing to undergo a medical assessment after testing positive for drugs and admitting to use of prescribed medical cannabis [*Bourassa v Trican Well Service Ltd.*, 2019 AHRC 13 (CanLII), May 2, 2019];
- Ontario arbitrator says employer can fire personal support worker for renegeing on promise to submit to random drug testing as part of a return to work agreement [*Regional Municipality of Peel and Community Workers The Sheridan Villa v Canadian Union of Public Employees, Local 966*, 2019 CanLII 91782 (ON LA), September 26, 2019];
- Newfoundland court finds no disability discrimination in refusing to hire admitted medical cannabis user for safety-sensitive construction job [*IBEW, Local 1620 v. Lower Churchill Transmission Construction Employers' Association Inc.*, 2019 NLSC 48 (CanLII), Feb. 22, 2019].

Employer Loses

- Ontario arbitrator reinstates worker fired for refusing fitness for duty drug test because there was no reasonable cause for performing the test [*Toronto Transit Commission v Amalgamated Transit Union, Local 113*, 2019 CanLII 36521 (ON LA), April 24, 2019];
- BC arbitrator nixes firing of housekeeper caught with booze in her lemonade bottle while she was on last chance agreement because there was no proof she actually drank it at work [*Harrison Hot Springs Resort v Unite Here, Local 40*, 2019 CanLII 28162 (BC LA), March 11, 2019]; and
- Newfoundland arbitrator temporarily bars helicopter transport company from implementing random drug test policy for safety-sensitive workers because the latter's privacy interests outweighed the former's safety interests [*Office and Professional Employees International Union v Cougar Helicopters*, 2019 CanLII 66726 (NL LA), July 12, 2019].

6. Workers' Comp Legal Trends

OHS directors will also need to prepare for changes to workers' comp. Key things to watch out for:

- Full-blown workers' comp reform being considered in BC, Manitoba, New Brunswick all 3 territories;
- Expansion of cancer coverage for firefighters;
- Expansion of coverage for post-traumatic stress disorder and other mental illnesses; and

Overhaul of incentive programs like Workwell in Ontario, COR/SECOR in Alberta and COR in BC, as well as the new Health & Safety Excellence program in Ontario and SAFIS incentive program in New Brunswick.