

Ontario Compliance Alert: Get Ready for 6 Big OHS Changes



Significant OHS changes are in the works for Ontario employers. Here's a look at the proposed changes, the employers they affect, the OHS policy changes you'll need to make to comply and the timetable for compliance.

Employers Affected

Like many provinces, Ontario has separate OHS regulations for different industries, including construction, mining, health care and oil/gas. But the industry-specific OHS regulation covering the most employers is the *OHS Regulation for Industrial Establishments* (Reg. 851) which applies to factories, offices and office buildings, retailers, restaurants, warehouses logging operations and foundries.

Reason for Changes

Despite covering the largest number of workplaces, Reg. 851 is much less detailed than the other OHS industry-specific regulations. The proposed changes are designed to flesh out some of the Reg. 85 voids and bring them into line with the more comprehensive requirements of those other regulations, particularly construction and mining.

Example: Vertical falls are a hazard at industrial *and* construction sites. But while Reg. 851 has just 5 sections and 533 total words dealing directly with vertical fall hazards, the *OHS Construction Projects Regulation* (Reg. 213/91) devotes 11 sections and 3,289 words to the topic. The requirements are parallel. The difference is that Reg. 213/91 is much more specific in fleshing them out. Thus, while both regulations require fall arrest in roughly the same circumstances, Reg. 213/91 lays out specific standards that each component of the system must meet. Accordingly, the MOL is proposing to incorporate the details from Reg 213/91 into Reg. 851.

And it's not just fall protection. Other proposed changes draw from existing construction and mining regulations to fill other Reg. 851 bare spots including

traffic control and PPE. In addition to clarifying employers' duties, the revisions are designed to ensure greater consistency between Reg. 851 and the other sector-specific OHS regulations.

The Timeline

Proposed changes to regulations must be open to public consultation for 60 days. The MOL posted the proposed Reg. 851 changes on Feb. 6, 2018. Once the consultation period ends on April 6, the agency will finalize the changes and publish them in the Ontario Gazette. While that could take a few months, based on previous OHS changes, we'd guesstimate a target date somewhere between April 20 to May 7. As for the effective date, there are 2 possibilities:

- The changes will take effect immediately as of the date they're published in the Gazette; or
- The MOL will give employers a deadline to comply which would likely be in the range of 3 to 6 months.

The 6 Change

The MOL has proposed 6 sets of changes to Reg. 851. Let's go through each of them one at a time.

Change 1. New Express Duty to Perform Risk Assessment

Current Rule: Risk assessment, or collective identification and evaluation of workplace hazards and selection of appropriate controls to eliminate or at least minimize them, is not only a best practice but also a regulatory requirement in almost all jurisdictions. But general risk assessment is not part of the Ontario *OHS Act*; and it's expressly required in only a few OHS regulations for certain operations (e.g., confined space entry) and sectors (e.g., construction and mining); industrial establishments is not among the latter.

Changes: The MOL is proposing to add a new express duty of employers to perform general risk assessment to Reg. 851 based on current Sections 5.1, 5.2 and 5.3 of the *OHS Mines & Mining Plants Regulations* (Reg. 854). Under the new rules, such an assessment must:

- Be performed at industrial establishments where 20 or more workers are regularly employed;
- Consider the nature of the workplace, type of work and work conditions not just at the particular site but similar workplaces; and
- Be in writing and provided to the joint health and safety committee (JHSC) or health and safety representative (HSR) for the site or if there is no JHSC or HSR, communicated to the workers and made available to any worker who requests it.

The employer must then select appropriate measures to control the hazards identified by the assessment in consultation with the JHSC/HSR. Spelling out what is now only implied, Reg. 851 would require consideration and, where reasonable and applicable, adoption of measures following the hierarchy of control, including: and in accordance with hierarchy of control principles via consideration:

- Substitution;

- Engineering controls;
- Work practices;
- Industrial hygiene practices;
- Administrative controls; and
- PPE as a last resort.

The employer would have to review the assessment as often as necessary in response to new and/or changing hazards and at least once a year to ensure it's still effective in light of current hazards, operations and other conditions.

What To Do: Review your current OHS Program to ensure it provides for formal risk assessment in accordance with the new requirements. The good news is that you probably won't need to do a lot revision since the new requirements are merely a codification of what was already required as a best practice. But you may have to modify some of the administrative details, e.g., consultation with the JHSC/HSR, to meet the new Reg. 851 rules.

Change 2. Specific New Fall Protection Requirements

Current Rule: As noted above, Reg. 851 requires you to take measures to protect workers from vertical fall hazards. But the rules are short on detail and specificity, especially when compared to the fall hazard provisions spelled out in OHS regulations for other sectors.

Changes: The proposed changes would extend current requirements for scaffolding, suspended work platforms, boatswain chairs, guardrails and fall protection systems at construction projects under Reg. 213/91 to industrial establishments under Reg. 851. Table 1 below sets out the details:

Table 1. Proposed Fall Protection Changes

Topic	Current Rule(s)	Proposed Change(s)
Scaffolds & Work Platforms	No specific requirements for scaffolds in Reg. 851 the way there are in Const. Reg. (Reg. 213/91)	<p>Add Reg. 213/91 scaffold requirements to Reg. 851, including:</p> <ul style="list-style-type: none"> * General design requirements *Design rules for scaffolds mounted on castors and wheels *Design rules for scaffolds >10 or 15 metres *Design and strength requirements for scaffold platforms and other work platforms *General requirements for guardrails and means of access and egress

Scaffold Limits States Design	No specific requirements for scaffold design, construction and load limits	<ul style="list-style-type: none"> * Scaffold design and construction must support or resist maximum load or force to which likely subjected that was determined using limit states design with load factor of at least 3.0 * Scaffold platform and other work platform must be designed, constructed and maintained to support all loads and forces to which likely subjected, and at least 2.4 kilonewtons per square metre determined using limit states design with load factor of at least 1.5 * each component of scaffold platform or other work platform must be capable of supporting load of at least 2.2 kilonewtons determined using limit states design with load factor of at least 1.5
Suspended Work Platforms & Boatswain Chairs	No specific requirements for suspended work platforms and boatswain chairs in Reg. 851 the way there are in Const. Reg. 213/91	<p><u>Add Reg. 213/91 work platform & boatswain chair requirements to Reg. 851, including:</u></p> <ul style="list-style-type: none"> * General design requirements for suspended work platforms * Training required for workers who use or inspect suspended work platforms * Require testing of suspended work platforms, before first use and at least annually thereafter * Require permanent equipment logs * Specific requirements for fixed supports, roof plans, work plans and installation of suspended work platforms before use * Requirements re: structural aspects of suspended work platforms in use and safety of workers using equipment
Guardrails, Toeboards & Coverings	Specific rules set out in Sections 13 to 15	<p><u>Amend Secs. 13-15. Key changes:</u></p> <ul style="list-style-type: none"> * Clarify that requirements for guardrails apply to fixed elements in industrial establishments, inside or outside a building, including installed machinery or fixtures * Separate guardrail requirements for moveable equipment like scaffolds, suspended work platforms and elevating work platforms * Require guardrails for drops of 60 cm (approximately 2 feet) or greater * Same minimum/maximum top rail height requirements as in Reg. 213/91 * 2 new exemptions when guardrails not required

Fall Protection	Specific rules set out in Section 85	<p><u>Amend Sec. 85. Key changes:</u></p> <ul style="list-style-type: none"> * Fall protection required if worker at risk of falling: 1. >3 metres; 2. Into operating machinery; 3. Into water or other liquid; 4. Into or onto a hazardous substance or object; 5. Through an opening on a work surface *Fall protection not required if guardrail or covering installed *Training at heights NOT required the way it is under 213/91 *Add 213/91 specific design, construction and use requirements for fall protection systems, equipment and components *Separate guardrail requirements for moveable equipment like scaffolds, suspended work platforms and elevating work platforms * Require guardrails for drops of 60 cm (approximately 2 feet) or greater * Same minimum/maximum top rail height requirements as in Reg. 213/91 * 2 new exemptions when guardrails not required
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What To Do: Although the new requirements are detailed and specific, they're not necessarily different from previous rules, especially if you're among the many 'industrial establishment' employers that performs 'construction' work involving vertical fall hazards at your site. Thus, to the extent your current fall protection policies for such work are based on Reg. 213/91, you'll just need to ensure they cover all forms of work in which workers are exposed to vertical fall hazards.

Change 3. Specific New Traffic Safety Requirements

Current Rule: Reg. 851 includes general requirements for protecting workers exposed to vehicular, powered mobile equipment and pedestrian traffic hazards.

Changes: The proposed changes would require employers to take additional engineering, administrative, work control and PPE measures to control traffic hazards in accordance with current requirements for construction projects under Reg. 213/91 and mines/mining plants under Reg. 854, as listed in Table 2 below:

Table 2. Proposed Traffic Protection Changes

Topic	Current Rule(s)	Proposed Change(s)
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<p>Traffic Management</p>	<p>Reg. 851, Section 20: Barriers, warning signs or other safeguards for protection of all workers in an area shall be used where vehicle or pedestrian traffic may endanger the safety of any worker</p>	<p><u>Beef up & clarify Sec. 20 to require that:</u></p> <ul style="list-style-type: none"> * Designated walkways be used to separate pedestrian traffic from areas where vehicles or powered mobile equipment operate * Clearly visible warning signs be posted * Barriers and other safeguards and procedures be used to protect workers from vehicular or powered mobile equipment traffic depending on circumstances
<p>Traffic Management Program</p>	<p>No specific requirement for traffic management program in Reg. 851 the way there is for mines under Reg. 854</p>	<ul style="list-style-type: none"> * Add requirement that employers develop and maintain written traffic management program to address hazards from movement of powered mobile equipment at workplace * Must be reviewed as often as necessary to protect workers and at least annually * Employer must provide copy of written program to the joint health and safety committee or health and safety representative
<p>Signallers</p>	<p>Reg. 851, Sec. 56 requires signallers to work with operators of vehicles, mobile equipment, cranes or similar material handling equipment in certain situations</p>	<ul style="list-style-type: none"> * Signallers required to help operators of powered mobile equipment, or vehicle or trailer used to move or transport material if: 1. A person or operator could be endangered by the powered mobile equipment, vehicle, trailer, or its load; and 2. Any of the following conditions exists: i. Operator's view of intended path of travel is obstructed; OR ii. Operator's view of intended path of travel of load is obstructed * Separate requirement for signallers where operator of a crane or hoist doesn't have clear and unobstructed view of boom, jib, load line, load hook and load throughout the hoisting operation

Procedures for signallers	Not currently required by Reg. 851	<p>*Require employers to develop and maintain written procedures for operators and signallers, if Reg. or traffic management program requires use of a <u>signaller</u></p> <p>* Require signaler & operator to follow employer's procedures, discuss procedures with each other before starting work and communicate by via telecommunication system or prearranged visual signals</p> <p>* Signallers also required to perform no other work while acting as signaler, wear high visibility safety apparel, have clear view of and be clear of intended path of travel, be in full view of operator and watch part of vehicle, trailer, powered mobile equipment, crane or load whose path of travel the operator can't see</p>
High Visibility Safety Apparel	Not currently required by Reg. 851 for industrial establishment workers the way it is for miners under Reg. 854 and construction workers under Reg. 213/91	<p>* Incorporate current high visibility apparel requirements from Regs. 854 and 213/91 into Reg. 851</p>

What To Do: Perhaps the most onerous of the new requirements will be to create and implementation of a written traffic management program setting out specific measures taken to identify, assess and control traffic hazards. Again, though, some of the specific measures required are ones you may already take either as a best practice or to the extent you perform construction work subject to Reg. 213/91 at your industrial site.

Change 4. Specific New Storage Rack Requirements

Current Rule: Reg. 851 doesn't include express storage racks requirements.

Changes: The MOL would add a new section setting out specific rules for the design, construction, use and inspection of storage racks that would cover racks from which materials are loaded/unloaded other than manually that are either: i. 2.4 metres (8 ft) or higher (measured from floor to top of highest shelf); or ii. lower than 2.4 metres. 'Storage rack' is defined as a combination of steel frames, beams and associated accessories used, once assembled into a structure, to support materials and products (which would include pallet racks and cantilever racks). Under the new rules, employers must ensure that:

- The storage rack is: i. capable of safely supporting the items stored on it; ii. designed and constructed in accordance with good engineering practice; and iii. inspected at regular intervals; and regularly maintained;
- The storage rack's rated capacity is posted near the storage rack in a

place where it's visible to workers;

- The manufacturer's or a professional engineer's instructions for safely loading, unloading and maintaining rack are readily available at workplace; and
- The following tasks carried out by person with adequate knowledge, training and experience: i. installing or uninstalling a storage rack; ii. inspecting it for wear, corrosion, damage, missing or incompatible parts; and iii. making a record of the results of each inspection and providing them to the employer.

What To Do: The new storage rack requirements come not from another Ontario OHS regulation but another province, BC, where the same rules took effect on January 1, 2018. Still, they should have relatively little practical impact. After all, most employers don't need a formal regulation to recognize the importance of proper storage rack design, use and inspection. But some of the administrative requirements, e.g., with regard to manufacturer's instructions, may be new. So, you will need to determine whether your current racks meet the coverage criteria and, if so, meet the newly spelled out construction, design, use and inspection standards.

Change 5. New Requirements for Eyewash Stations & Deluge Showers

Current Rules: Section 124 of Reg. 851 requires employers to ensure that an eyewash fountain is provided if workers are exposed to eye injury from contact with a biological or chemical substance; Section 125 requires that a quick-acting deluge shower be in place if workers are exposed to skin injury from contact with a substance. Similar rules apply to mines and mining plants under Reg. 854 but the requirements are spelled out in much greater detail.

Changes: The MOL wants to carry over the more stringent Reg. 854 rules to Reg. 851. If and when the proposal is adopted, employers in industrial establishment will have to ensure that:

- One or more of the following is/are installed or kept if a worker is exposed to eye or skin injury from contact with a chemical or biological substance: i. antidotes, flushing fluids or washes; ii. eye wash facilities; and iii. quick-acting emergency showers;
- An eyewash facility or emergency shower is in a conspicuous place as near as practicable, and no more than 17 metres (55 feet), from where substance posing a hazard of eye or skin injury is used or kept;
- Antidote, flushing fluid or wash and instructions on how to use them are readily accessible to workers and in a conspicuous place as near as practicable to where the substance is kept or used;
- Workers' access route to above protections is unobstructed;
- Workers are instructed or trained in the use of the above protection methods.

What To Do: If your workers are exposed to chemical or biological eye or skin injury, it's hard to imagine why you wouldn't *already* have eyewash stations/showers/antidotes. You also, no doubt, take steps to keep access to those facilities unobstructed and provide proper training to workers in their use even if the current regulations don't expressly say you have to. But the one part of the new rule that may prove problematic is the 17-metres requirement. So be sure to inspect and make the physical adjustments necessary to comply.

Change 6. Personal Flotation Devices Instead of Lifejackets

Current Rule: Section 86 of Reg. 851 lists the methods employers must use to protect workers exposed to the risk of falling into a liquid deep enough to drown them. There must be an alarm system AND either of the following supplementary measures:

- Option 1: Appropriate rescue equipment + worker use of a life jacket; or
- Option 2: Written measures and procedures to prevent the worker from drowning.

Changes: The new rules specify that the required alarm system must be capable of warning workers of the necessity of carrying out a rescue operation. Employers would have the same 2 options for supplementary measurements as before but the requirements for Option 1 would be different (the changes are in bold face):

- Option 1: Appropriate rescue equipment that's **readily accessible to ensure the worker's rescue** + worker use of a life jacket **or a personal flotation device**; and
- Option 2: Written measures and procedures to prevent the worker from drowning **(unchanged)**.

The revisions also spell out something that was only implied before: The drowning rescue measures required by Section 86 don't apply if the worker is protected from drowning via guardrail, personal fall protection or other means.

What To Do: First, make sure your current alarm systems for drowning meet the new requirement and that workers know that when the alarm sounds, rescue is necessary. In other words, the drowning alarm should be distinct from alarms signaling the need for other actions, e.g., evacuation.

The accessibility rule should have no impact. Presumably, your drowning rescue equipment is already accessible. But the PFD option is something new and positive, to the extent that PFDs are generally more comfortable and less confining than life jackets.