

Ontario Compliance Alert: Part 1: Make 11 Fall Protection Policy Changes to Comply with New Rules



Proposed MOL regulatory changes in the pipeline will require at least some Ontario employers to modify their current OHS policies. Although the changes are wide-ranging, this series focuses on the 4 key OHS policies that will be the most directly and immediately impacted by the changes:

- Vertical fall protection;
- Scaffolds and elevated platforms;
- Traffic safety; and
- Biological and chemical hazards.

This installment explains how to revise your fall protection policy to meet the new requirements and includes a Model Policy that you can adapt for your own workplace.

Employers Affected

The proposed rule changes affect not all Ontario employers but those subject to the *OHS Regulation for Industrial Establishments* (Reg. 851). This includes factories, offices and office buildings, retailers, restaurants, warehouses logging operations and foundries.

Employers Not Affected

The changes don't affect worksites subject to another set of Ontario industry-specific OHS regulations, i.e., construction, oil/gas, mining, farming, teaching, window cleaning and diving operations.

Purpose of Changes

More workplaces are covered by Reg. 851 than any other industry-specific OHS regulations; but despite this, Reg. 851 is fairly antiquated and filled with gaps. The MOL's objective is to fix this paradox and bring Reg. 851 into line with more developed OHS regulations, especially *Construction Projects Regulation*

(Reg. 213/91) and *Mines & Mining Plants* (Reg. 854). In addition to fleshing out current requirements for industrial establishments, the idea is to ensure coordination of standards across industries.

The Timeline

The public consultation period on the proposed changes ended on April 6. Assuming the comment period isn't extended, the MOL will finalize the changes and publish them in the *Ontario Gazette*. While that could take a few months, April 20 to May 15 is a reasonable estimate based on previous changes. The key will be the effective date. The 2 possibilities:

- The changes will take effect immediately as of the date of publication in the *Gazette*; or
- The MOL will give employers a grace period to comply which might be in the range of anywhere from 1 to 6 months.

The Vertical Fall Hazard Changes

Vertical falls are a hazard at industrial *and* construction sites. Accordingly, measures to protect workers from fall risks are required at both industrial establishments covered by Reg. 851 and construction projects regulated by Reg. 213/91. The basic requirements are parallel. Under both regulations, employers (and/or constructors at construction projects) must assess fall hazards and implement engineering controls to manage them, starting with fixed barriers like guardrails and coverings and, where such measures aren't "practicable," via use of particular types of fall protection systems made up of components that meet and are used in accordance with specific standards.

The big difference is that Reg. 213/91 goes into far greater depth and detail. So, the MOL is proposing to replace the current Reg. 851 rules with requirements that are "substantially similar" to the fall protection requirements contained in Reg. 213/91. While there will be some substantive differences, the new fall protection requirements for industrial establishments won't be drastically different; but they will be a lot clearer, more specific and in line with what's required at construction projects.

The 11 Policy Changes You'll Need to Make

If your current fall protection policies are based on minimum requirements under current Reg. 851, you'll need to make major changes to bring them into compliance with the new MOL rules. Here are the 11 changes you'll need to make (based on the MOL's current proposal which is, of course, subject to change):

1. List Express Duty to Perform Risk Assessment

While recognized as a best practice, risk assessment isn't currently listed as an express duty under Reg. 851. The MOL proposes to change that. Hopefully, your fall protection policy already requires a risk assessment. But if it doesn't, you'll need to add it to the policy. Note also that the new Reg. 851 duty is to perform general risk assessment (including but not limited to fall hazards) at industrial establishments where 20 or more workers are regularly employed. Make sure your policy also specifies that the risk assessment must be in writing and furnished 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 [Model Policy, Section 6].

2. Revise Definition of Situations Requiring Fall Protection

Current Reg. 851 requires fall protection if workers are exposed to falling more than 3 metres. The MOL proposes to broaden that requirement to cover workers at risk of falling:

- More than 3 metres;
- Into operating machinery;
- Into water or another liquid;
- Into or onto a hazardous substance or object; and/or
- Through an opening on a work surface.

So be sure to revise your policy accordingly [Model Policy, Section 6].

3. Revise Definition of Situations Requiring Guardrails

As before, guardrails will be the primary and preferred method of fall protection to be used whenever “practicable” (the same rule applies to construction projects under Reg. 213/91). But under current Reg. 851 (Section 13(1)), guardrails are required:

- Around the perimeter of an uncovered opening in a floor, roof or other surface to which a worker has access;
- At an open side of:
 - A raised floor, mezzanine, balcony, gallery, landing, platform, walkway, stile, ramp or other surface; or
 - A vat, bin or tank, the top of which is less than 107 centimetres above the surrounding floor, ground, platform or other surface; and/or
- Around a machine, electrical installation, place or thing that’s likely to endanger a worker’s safety.

The MOL is proposing to add 2 new situations requiring use of guardrails:

- At the open side of a stairway; and
- top of an unguarded shaft.

[Model Policy, Section 7.1.].

4. Revise Design Standards Guardrails Must Meet

As under current rules, guardrails will have to consist of a top rail, intermediate rail and toe board. In addition to changing “guardrails” to “guardrail systems” (defined as an assembly of components joined together to provide a barrier to prevent a worker from falling from the edge of a surface), the MOL is proposing to modify the design and construction requirements pertaining to each of these components to align with Reg. 213/91 and Ontario Building Code standards [Model Policy, Section 7.3.].

5. Allow for Temporary Removal of Guardrails & Coverings

Reg. 213/91 allows for temporary removal of guardrails and coverings at construction projects provided that appropriate safety measures are taken. The MOL wants to incorporate that rule into Reg. 851 and allow for temporarily

removing guardrails and coverings at industrial establishments to perform work in or around the opening as long as personal fall protection or other appropriate measures are taken to protect the workers in the area and the guardrail or covering is replaced immediately after the work is completed or if the area is left unattended [Model Policy, Section 7.5.].

6. List Hierarchy of Fall Protection Systems to Be Used If Fixed Barriers Aren't Practicable

At both industrial establishments and construction projects, fall protection systems are the next line of defence to be used when fixed barriers aren't practicable (or as a supplement to fixed barriers.) But while the requirements are substantially the same, they're spelled out much more clearly in the construction regulations. So, the MOL is essentially proposing to replace the current Reg. 851 fall protection rules with the fall protection rules for construction projects under Reg. 213/91 (with a few exceptions). The first change, which you need to account for in your fall protection policy, is to indicate that you'll consider and adopt whichever of the highest ranked methods is practicable listed in order of preference:

- A travel restraint system;
- A fall restricting system;
- A fall arrest system; or
- A safety net.

[Model Policy, Section 8.2.].

7. List General Criteria for Fall Protection Systems & Components

Another import from Reg. 213/91 to account for in your policy is the inclusion of specific nongovernment standards that fall protection system components must meet, i.e.:

- CAN/CSA-Z259.1-05: Body Belts and Saddles for Work Positioning and Travel Restraint;
- CAN/CSA-Z259.2.5-12: Fall Arresters and Vertical Lifelines;
- CAN/CSA-Z259.2.2-98 (R2004): Self-Retracting Devices for Personal Fall-Arrest Systems;
- CAN/CSA-Z259.2.3-99 (R2004): Descent Control Devices;
- CAN/CSA-Z259.10-06: Full Body Harnesses;
- CAN/CSA-Z259.11-05: Energy Absorbers and Lanyards;
- CAN/CSA-Z259.12-01 (R2006): Connecting Components for Personal Fall Arrest Systems (PFAS); and
- CAN/CSA-Z259.14-01 (R2007): Fall Restrict Equipment for Wood Pole Climbing.

[Model Policy, Section 8.3.].

8. List Criteria for Particular Fall Protection Systems

In addition to the general equipment criteria, the MOL is proposing to add specific requirements for each particular fall protection system. So you'll need to add language to your policy indicating that if you do use such systems, you'll meet the criteria that apply to the particular system. Like our Model Policy does, it's advisable to include separate sections listing the required criteria for each, including:

- Travel restraint systems [Model Policy, Section 8.4.];
- Fall restricting systems [Model Policy, Section 8.5.];
- Fall arrest systems [Model Policy, Section 8.6.];
- Permanent anchor systems in general [Model Policy, Section 8.7.];
- Temporary fixed support systems in general (if permanent anchor systems aren't practicable) [Model Policy, Section 8.8.];
- Lifelines and lanyards in general [Model Policy, Section 8.9.]; and
- Safety nets [Model Policy, Section 8.10.].

9. Specifically Require Rescue Procedure

Making express what before was only implied, the MOL proposal requires employers to develop procedures for rescuing workers after their fall is arrested, e.g., by a fall arrest system or safety net. Hopefully, your current fall protection policy already provides for this [Model Policy, Section 9].

10. List New Inspection Requirements

Again, the duty to inspect fall protection systems and their components should not be anything new. However, the MOL proposal not only makes the duty explicit but spells out what it entails, including mandatory:

- Inspection of the system before it's made operation to ensure proper installation;
- Inspection by a competent worker before each use;
- Inspection by a professional engineer before each use of a horizontal lifeline system;
- Immediate removal from service of components or equipment found to be defective unless and until they're certified as being safe for reuse;
- Immediate removal from service of fall restricting systems if a worker using the system falls or slips more than the permitted distance unless and until the manufacturer certifies that all components of the system are safe for reuse; and
- Immediate removal from service of fall arrest systems if a worker using the system falls unless and until the manufacturer certifies that all components of the system are safe for reuse.

11. Add New Definitions

Last but not least, you'll need to add a number of new definitions to your fall protection policy to comply with the new industrial establishment rules, including:

- Allowable unit stress (as in how much stress a system must be able to withstand);
- Competent worker (as in who must inspect fall protection systems before each use);
- Fall arrest system;
- Fall restricting system;
- Full body harness;
- Guardrail system;
- Professional engineer (as in who must inspect the system's installation);
- Safety net; and
- Travel restraint system.

NO NEW TRAINING REQUIRED

The one part of your fall protection policy that you won't have to change is the section covering safety training and instruction. As under current Reg. 851 requirements (Section 79), you must ensure that workers receive adequate training and instruction in use of the fall protection system and equipment before permitting or requiring them to use it. What is NOT required, in other words, is working at heights training. Stated differently, working at heights training isn't mandatory for workers using fall protection at industrial establishments but is mandatory for workers using it at construction projects.