

Ontario OHS Law Year in Review



The most important new laws, highest OHS fines and what to expect in 2021.

As in every other province, [complying with the new COVID-19 public health rules and emergency orders put in place to prevent workplace infection](#) will be the most imperative challenge for Ontario OHS directors in 2021. But while things look particularly grim as the year begins, the hope and expectation is that things will slowly start getting back to normal. So, our analysis focuses on the long-term changes, both COVID- and non-COVID-related, that you need to be aware of heading into 2021. Here are the Top 4 new laws.

1. Exemption from COVID-19 Lawsuits

On November 20, Ontario became the first (and, so far, only) province to enact legislation barring private COVID-19 lawsuits. [Bill 218](#), which took effect retroactively to March 17, 2020, means businesses and workers won't have to worry about being [sued for money damages by third parties](#) for allegedly infecting them with or exposing them to the virus. But exemption isn't automatic. To qualify for the protection, would-be defendants must show that they acted or 'made a good faith effort' to act in accordance with coronavirus public health guidance and applicable laws.

Takeaway: The need to preserve Bill 218 immunity from

liability ratchets up the importance of implementing a sound [COVID-19 exposure control plan](#) at your workplace.

2. New Respiratory Protection Requirements

The most significant new Ontario OHS regulation in 2020 were the [revisions to respiratory protection requirements](#) under the *Biological or Chemical Agents (Reg. 833)* and *Designated Substances (O. Reg. 490/09)* regulations, which:

1. Replace the previous substance-specific formula for calculating ceiling exposure (CV) level with a standard formula that applies to all hazardous agents;
2. Allow for use of the so-called 'Quebec Model' to calculate exposure levels for irregular shifts;
3. Consolidate the 9 separate substance-specific Medical Surveillance Codes into a single [Medical Surveillance Code](#) covering all substances;
4. Require employers to consider substitution before looking at engineering controls and [PPE to protect against respiratory hazards](#);
5. Require [respiratory protective equipment](#) to be NIOSH approved and meet Assigned Protection Factor criteria; and
6. Clarify the [fit-testing requirements](#) for tight-fitting respirators.

Takeaway: To comply with the new rules, employers must create a written [respiratory protection program](#) that incorporates all of these measures.

3. New Rules for Temporary Stairs at Construction Sites

The second most far-reaching OHS regulatory change were the new requirements for temporary stairs at construction sites

that took effect on January 1, 2020.

A. When Stairs Are Required

Old Rule: Stairs had to be installed before construction of a building or structure that would be at least 2 storeys when completed.

New Rule: Stairs must be installed before construction of **any** building or structure regardless of how many storeys it will be when completed.

B. How High Stairs Must Be

Old Rule: As construction of a building or structure progressed, permanent or temporary stairs had to be installed up to: (a) the uppermost work level; or (b) if stairs would interfere with work on the uppermost work level, no more than 2 storeys or 9 metres below the uppermost work level, whichever was shorter.

New Rule: As construction of a building or structure progresses, permanent or temporary stairs must be installed **from the lowest level, including the basement**, up to: (a) the uppermost work level; or (b) if stairs would interfere with work on the uppermost work level, no more than 2 storeys or 9 metres below the uppermost work level, whichever is shorter.

C. Exception to Height Requirement

Old Rule: The above installed-up-to requirement didn't apply to: (a) a part of a building or structure in which only the structural steel beams or columns were erected; or (b) a structure to which a permanent ladder was attached before the structure was raised into position.

New Rule: The above installed-up-to requirement doesn't apply to: (a) a part of a building or structure in which only the structural steel beams or columns are erected; (b) a structure to which a permanent ladder is attached before the structure

is raised into position; or (c) a part of a building or structure in which formwork or falsework is erected to a suspended slab.

4. Loosening of Working at Heights Training Rules

[Revised OHS awareness training regulations](#) that took effect on January 2021, expand the scope of automobile sector companies that are exempt from the duty to ensure workers at construction projects who are at risk of falling 3 metres or more get Working At Heights training. To avoid the need for duplicative training, the exemption now also applies to workplaces owned by the same manufacturer or assembler. The new rules also recognize Fall Protection training approved by WorkplaceNL (Newfoundland is the only other province with mandatory government-sanctioned fall protection training and the program is pretty rigorous) as an acceptable alternative to WAH training approved by the Ontario Chief Prevention Officer.

5 Biggest OHS Fines in Ontario in 2020

By closing courts and diverting enforcement resources to COVID-19, the pandemic slightly reduced the volume and amount of OHS fines in Ontario. Here were the 5 biggest fines that did come down in 2020 (each of which also carried a 25% surcharge)'

1. **\$290,000** against ArcelorMittal Dofasco MP Inc. for a pair of incidents, one for excessive carbon monoxide exposure and the other for a machine fatality.
2. **\$250,000** against Rayonier A.M. Canada Industries Inc. for a fatal forklift incident involving a lumber mill worker.
3. **\$225,000** against Satin Finish Hardwood Flooring, Limited (now called Prodtor Inc.) for fatal injuries to a worker

who got trapped inside a wood-drying kiln.

4. **\$200,000** against Linamar Corporation operating as Linamar Gear, after a worker not wearing required skin protection suffers serious injuries in a furnace explosion.
5. **\$175,000** against Prestressed Systems Inc. (PSI Inc.) after anchor plates being used to construct a bridge slide from their support and killing one worker and seriously injuring another.

The Pipeline: Ontario OHS Changes to Expect in 2021

Although the fine-tuning and enforcement of COVID-19 restrictions will remain the top priority, you can expect other significant OHS legal changes in 2021, including:

- Continuation of the MOL's initiative to revise and relax the rules for pre-start health and safety reviews (PSRs) at factories and other workplaces covered by the *OHS Regulations for Industrial Establishments*;
- [New rules](#) on how to provide required safety notices to JHSCs, health and safety representatives, union officials, the MOL and WSIB; and
- Beefed up safety protections for gas station attendants, retail workers and others at higher risk of workplace violence (under [Bill 231](#)).