

Planning to Grow your Contingent Workforce in Alberta?



Contributed by: Susan Greeves

An Act to Protect the Health and Well-Being of Working Albertans (Bill 30) has amended the definition of “employer” in Alberta’s *Occupational Health and Safety Act* (the “OHS Act”).

Deloitte’s “Human Capital Trends 2018” survey notes that 50 percent of all respondents reported a significant number of contractors or freelancers in their workforces. According to the survey, globally the percentage of contingent workers is steadily rising, increasing by 36 percent in just the last 5 years.

New Employer Definition

The amended OHS Act recognizes and addresses the growing contingent workforce and requires companies to meet OHS employer obligations for certain workers even in the absence of a direct contract of employment.

With effect from June 1, 2018, the new definition of employer under the OHS Act states:

‘employer’ means a person who employs or engages one or more workers, including a person who employs or engages workers

from a temporary staffing agency, a person designated by an employer as the employer's representative, or a director or officer of a corporation or person employed by the employer who oversees the occupational health and safety of the workers employed by the corporation or employer.

The amended OHS Act defines '**temporary staffing agency**' as a person who retains workers and deploys or facilitates the placement of those workers with other employers.

Previously the OHS Act defined employer as a person who is self-employed in an occupation, **a person who employs one or more workers**, a person designated by an employer as the employer's representative, or a director or officer of a corporation who oversees the occupational health and safety of the workers employed by the corporation.

Who is Affected'

The definition of temporary staffing agency is broadly drafted; it includes not only traditional staffing agencies and labour providers but also captures those companies who are not in the labour provision business but who, from time to time, provide workers for another employer and do not manage and direct their work themselves. These workers essentially become embedded in the receiving employer's organization and day to day supervision and oversight is provided by the receiving employer.

This provision of the OHS Act aims to ensure that every worker has an "employer" at the worksite. Among numerous other obligations, employers are obligated to ensure:

- the health and safety and welfare of workers engaged in the work of that employer, those workers not engaged in the work of that employer but present at the work site at which that work is being carried out, and other persons at or in the vicinity of the work site who may be affected by hazards originating from the work site;

- that the employer's workers are aware of their rights and duties under the OHS Act, the regulations and the OHS Code and of any health and safety issues arising from the work being conducted at the work site;
- that none of the employer's workers are subjected to or participate in harassment or violence at the work site; and
- that the employer's workers are supervised by a person who is competent, and is familiar with the OHS Act, the regulations and the OHS Code that apply to the work performed at the work site.

Dual Obligations

A receiving employer should not simply rely on paper qualifications or the assigning company's description or assurance of competence for the particular worker. Arguably, the receiving employer has a duty to satisfy itself of the worker's competence to perform the work.

The assigning company, whether a formal staffing agency or not, must satisfy itself that the worker is suitable to perform the task for which the worker is to be assigned, is equipped with any necessary personal protective equipment prior to deployment to the other employer, or will be so equipped prior to commencing work activities with the receiving employer, and ensure that the other employer is capable of ensuring the health and safety of the worker.

Therefore, the receiving employer can no longer simply request workers by trade description and send them to work without further inquiry.

Similarly, the assigning employer or agency cannot simply send a worker to another employer and assume that all health and safety requirements will be met.

Both assigning companies and receiving employers should look carefully at their contract language and procedures for

assignment and onboarding to ensure that their respective duties under the OHS Act are met.

As a matter of practice, many receiving employers adopt a “hands off” approach to their contingent workers, mindful of co-employment concerns. Going forward, while the OHS Act cannot create a direct contract of employment, your contingent workers are indistinguishable from members of your permanent workforce, at least in relation to their health and safety and welfare at the work site.

About the author: Susan Greeves is Senior Corporate Counsel at Syncrude Canada Ltd. Syncrude Canada Ltd. is the operator of the Syncrude Project, an oil sands joint venture whose facilities include an integrated mining and upgrading operation, which are wholly located north of Fort McMurray, Alberta.