

Safety Director's Compliance Briefing: What Is Workplace Safety Law?



'What does the OHS law say about X'

That's a question safety directors get asked pretty often. To answer it, it's commonly assumed, you need to look at that secret code tucked away in a dusty volume that only lawyers know how to access. I'm here to tell you that there is no such volume. The 'law' is a much more complicated and dynamic thing made up of not just law books but other elements you wouldn't think of as having legal force, including voluntary standards, government guidance and even the terms of your collective agreements. The secret is being able to track down and interpret all those sources. And that's exactly what I'm going to show you how to do.

The 6 Elements of Workplace Safety Law

What we think of as occupational health and safety law is an amalgamation of 6 different elements.

1. [Statutes](#)

Statutes, aka, 'Acts,' are pieces of legislation enacted by a federal, provincial, or municipal legislature. In the context of workplace safety, such legislation is typically called the 'Occupational Health and Safety Act' although names vary by jurisdiction.

Table 1: OHS Statute by Jurisdiction

Jurisdiction(s)	Name of Workplace Health & Safety Statute
ON, AB, NB, NL, NS, PEI, QC, YK	Occupational Health & Safety Act
Federal	Canada Labour Code (Part II)
BC	Workers Compensation Act (Part 3)
Saskatchewan	Saskatchewan Employment Act (Part III)
Manitoba	Workplace Safety & Health Act
NWT, NU	Safety Act

While in most jurisdictions, the Act is standalone legislation, in BC, SK and under federal law, it's one part of broader employment legislation. What doesn't vary are the basic things the Act does, including:

- Listing the Act's purposes;
- Setting out the broad duties and rights of different individuals and entities covered by the Act;
- Designating (or creating) the government agencies responsible for overseeing and enforcing the Act;
- Giving those agencies the power to adopt regulations implementing the Act; and
- Listing the enforcement mechanisms and penalties for violations.

While the OHS Act is the biggie, there are also other statutes that affect health and safety in the workplace, including (to name just a few):

- The worker's compensation statute, which provides benefits for work injuries and illnesses;
- Fire & Building Codes which establish requirements for work buildings and facilities;
- Laws banning indoor smoking; and
- Municipal health and safety statutes.

2. Regulations

Regulations are created not by the legislature but the government agency that administers the statute to supply the crucial implementation details and specific things that must be done to comply. Example:

- 25(2)(h) of the Ontario OHS Act says employers must 'take every precaution reasonable in the circumstances' to protect workers but doesn't specifically mention machine (or any other) hazards;
- 24-35 of the OHS Regulation for Industrial Establishments lists specific guarding measures that must be implemented to protect workers from machine hazards;
- Result: Failure to ensure the machine guarding measures required by the Reg. are in place violates the employer's duty to 'take every precaution reasonable' under Sec. 25(2)(h) of the statute.

The regulations are the go-to source for any safety director trying to run a compliant OHS program. But where you find them depends on your jurisdiction. That's because OHS regulations may be contained in a single general regulation and/or separate regulations covering:

- Specific industries such as mining or construction;
- Specific hazards or operations like WHMIS or confined spaces; and/or
- Administrative aspects of the law such as workplace JHSCs, administrative penalties and exclusions from coverage.

Table 2: OHS Regulations by Jurisdiction

Jurisd. (& Authorizing Statute)	General OHS Reg.	Industry-Specific	Hazard/Operation-Specific	Other
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FED (Canada Labour Code, Part II)	Can. OHS Regs.	*Aviation *Coal Mining *Maritime *Oil & Gas	NONE	*JHSCs *Exemption for Ontario Hydro Facilities *Exemption for Sask. Uranium Mines
AB (OHS Act)	OHS Code	NONE	NONE	*OHS Reg. *Admin. Penalties *Exemption for Farms & Ranches
BC (Workers' Comp. Act, Part 3)	OHS Reg.	NONE	NONE	NONE
MB (WSH Act)	Workplace Safety & Health Reg.	Mines	NONE	Administrative Penalties
NB (OHS Act)	General Reg.	Underground Mines	*WHMIS *Working Alone *First Aid *Asbestos	*Admin. Reg. *Training & Designated Trades
NL (OHS Act)	OHS Regs.	NONE	*WHMIS *Asbestos Abatement *Asbestos Exposure *First Aid	NONE
NS (OHS Act)	*Occupational Safety General Regs. *Workplace Health & Safety Regs.	*Underground Mining *Occupational Diving	*WHMIS *First Aid *Blasting *Workplace Violence	Disclosure of Information

ON (OHS Act)	NONE	*Construction Projects *Diving Operations *Farming Operations *Health Care & Residential Facilities *Industrial Establishments *Mines & Mining Plants *Oil & Gas'Offshore *Teachers *Univ. Academics & Teaching Assistants *Window Cleaning	(1) *WHMIS *Asbestos *Confined Spaces *Control of Exposure to Biological or Chemical Agents *Designated Substances *Firefighters'Protective Equip. *Needle Safety *Noise *Roll-Over Protective Structures *X-ray Safety	*Critical Injury Reporting *JHSC Exemptions *OHS Awareness Training *Offices of Worker & Employer Advisers
PEI (OHS Act)	OHS Act General Regs.	NONE	*WHMIS *Fall Protection *Scaffolding	NONE
QC (OHS Act)	OHS Reg.	*Construction *Forest Development Work *Foundry Works *Indust. & Commercial Establishments *Mines	*WHMIS (Haz. Prods. Info. Reg.) *Building Code *Concrete Pump & Building Masts *Quality of Work Environment	*JHSCs *Re-assignment of Pregnant or Breastfeeding Workers *Occ. Health Services *Prevention Programs *Pulmonary Exams for Mine Workers
SK (Sask. Employment Act, Part III)	OHS Regs.	*Mines *Prime Contractor Regs	WHMIS	NONE
NWT (Safety Act)	OHS Regs.	Oil & Gas	NONE	NONE
NU (Safety Act)	OHS Regs.	NONE	NONE	NONE

YK (OHS Act)	*OHS Regs. *Occ. Health Regs.	Commercial Diving	*WHMIS *First Aid *Radiation	Labs Designated for Testing Hoisting Ropes
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Note:

(1) In Ontario, the First Aid Regulations are adopted under the workers' comp statute rather than the OHS Act

3. Court Cases

Court cases are rules made by judges in actual rulings based on the facts of the particular situation. Although each case is different, court rulings create a precedent that judges use to decide future cases.

In the context of OHS law, the significance of court cases is in interpreting the requirements set out in OHS statutes and regulations.

Example: The most important OHS case ever decided in Canada, one you've probably heard of, is *R. v. Sault Ste. Marie* decided by the Canadian Supreme Court in 1978 when the OHS laws first took effect. To get a conviction, the Crown must normally prove 2 things: 1. The defendant committed the offence, i.e., did something the law prohibits or omitted to do something the law requires; and ii. That it did so with the required state of mind (in lawyer language '*mens rea*'), e.g., willfully or recklessly. One of the things that made the OHS laws so different and scary was that they had no *mens rea* requirements. Translation: All the Crown had to prove was the defendant committed the offence regardless of state of mind.

Or so it seemed. But in *Sault Ste. Marie*, the Court released a thunderbolt. The legislators who wrote the OHS laws didn't mean to be so strict, the Court reasoned. Their real, although implied intention is that *mens rea* should count for something. Specifically, a defendant found to have committed a violation should be able to avoid liability by proving that he/she/it took all reasonable steps in the circumstances to follow the

law and protect safety.

And so the due diligence defence was born. Since *Sault Ste. Marie*, one of the main roles of courts in OHS law is to decide whether defendants who violated the Act or regulations have done enough to prove due diligence, with each ruling creating a precedent for subsequent cases. (More on due diligence in Sec. 6 below.)

4. Collective Agreements

Collective agreements are contracts that employers negotiate with a labour union representing the company's workers. The safety obligations contained in the collective agreement may be used to flesh out or even modify, i.e., make more but not less strict, the requirements imposed by the OHS statute or regulations with regard to the workers, operations or work sites the agreement covers.

EXAMPLE

OHS Regs. require fall protection for workers at risk of falling more than 3 metres:

OK: Collective agreement requires fall protection for workers at risk of falling >2 metres

NOT OK: Collective agreement requires fall protection only for workers at risk of falling >4 metres

Collective agreements can also extend and clarify an employer (or worker's) legal duties by furnishing specific details not spelled out in the OHS laws.

EXAMPLE

OHS Regs. require employers must pay for 'reasonable travel costs' of medical exams of workers working in compressed air but don't define what travel costs are 'reasonable'

The collective agreement can fill in these details'but **can't** take away the workers' right to reimbursement for travel costs

5. Government Guidance

Government agencies like WorkSafeBC or the Ontario MOL issue

guidance on specific parts of the OHS statute and regulations they enforce. While it doesn't have the legal force of regulation, guidance is important because it explains how the MOL interprets the law and what people and organizations must do to comply with it.

6. Voluntary Standards

Voluntary standards, i.e., nonbinding codes issued by nongovernment organizations like the CSA, ANSI and NFPA, industry codes and best practices, pick up where regulations leave off by delving into the technical details needed to achieve safety. Because they're based on actual operations, voluntary standards typically require employers to do more than the law requires.

EXAMPLE

OHS Regs. say that workers must use 'appropriate' head protection
CSA Z94.1-05 (Industrial Protective Headwear) sets out specific standards for different classes of protective headwear regarding design, construction, fit, selection, use and maintenance

'Voluntary standards' may become mandatory when they get 'incorporated by reference' into and thus become part of the OHS laws (typically the Regs.)

EXAMPLE

The OHS Regs. of most jurisdictions say that the components of a fall arrest system must meet specific CSA standards, CSA Z259.10-06 for full body harnesses. Failing to meet the CSA standards thus becomes an OHS offence.

Voluntary standards may also be used by MOL inspectors, prosecutors and judges to determine if an employer took all the 'reasonable steps' necessary to prove due diligence.
Explanation: The steps required by the voluntary standard becomes the standard for 'reasonable.'

EXAMPLE

OHS Regs. say that an in-running nip hazard or any part of a machine, device or thing that may endanger the safety of any worker must be equipped with and guarded by a guard or other device that prevents access to the pinch point,' but doesn't say anything about the kind of 'device' to use.

CSA Z432-94 (Machine Guarding) says that the height of a guard is a key factor in choosing a device and that a barrier of less than 39 inches/1 meter is too short because workers can climb over it.

Ontario Court rejects an employer's due diligence and finds it guilty of a machine guarding violation because the device it provided didn't meet the CSA height requirements.