

Variances from OHS Requirements – Know the Laws of Your Province



OHS laws give you some leeway to implement alternative measures.

There may come a time when the required procedures, materials, equipment and other safeguards simply don't work nearly as well for your particular company or situation as alternatives not listed in the OHS regulations. It's frustrating to think that you can't take advantage of these alternatives. Or can you? In fact, the OHS regulations of most jurisdictions do leave some leeway for alternatives. But there are 2 big conditions:

1. The alternatives must provide protection that's at least equivalent to what the regulations require; and
2. In most jurisdictions, you must get written authorization to vary from the regulations.

Here's a look at the OHS variance rules in each part of Canada.

Variances & Exemptions from OHS Requirements

FEDERAL

No OHS exemptions or variances. **Exception:** Coal Mining Safety Commission may grant employer applications for exemptions from or substitute provisions for coal mine operation regulatory requirements if it doesn't diminish workers' health and safety [*Canada Labour Code*, Sec. 137.2(3)]

ALBERTA

Under Sec. 65 of the *OHS Act*:

- Prime contractor, contractor, employer, self-employed person, supplier, service provider or owner ('Applicant') can apply to Director for acceptance for an alternative piece of equipment, work process, standard, requirement, substance, service, first aid service or first aid supplies or equipment at work site; application must be in writing, state why the acceptance is requested and furnish details showing that the requested acceptance alternative provides equal or greater protection than the OHS Code requirement

- Applicant must: i. post copy of application and leave it up until Director makes a decision; and ii. give copy to JHSC or health and safety rep
- Director may grant acceptance in writing, subject to any conditions it deems necessary to ensure health and safety
- Once granted, applicant must post acceptance in a conspicuous place at work site and ensure it's otherwise communicated to affected workers
- Acceptance can remain in effect for maximum of 5 years but can be revoked, suspended or revised by Director at any time

BRITISH COLUMBIA

Under Div. 9 of the *Workers Compensation Act*:

- Application for a variance must be in writing, describe the variance requested, state why the variance is requested and furnish information of the 'benefits and drawbacks' to be expected at the workplace if it's accepted
- Board may grant variance if it's satisfied that it affords workers protection equal to or greater than or has substantially same purpose and effect as that required by the provision being varied
- Applicant must post copy of application and leave it up until Board makes a decision, and give copy to JHSC or health and safety rep and union rep
- Board may grant variance in writing, subject to any conditions it deems necessary to ensure health and safety
- Applicant must post copy of Board's decision in a conspicuous place at the work site for: i. 7 days unless the Board requires a longer posting period if the variance is denied; or ii. for as long as the variance remains in effect if it's granted
- Acceptance can remain in effect for maximum of 3 years unless applicant asks for and Board grants a longer term

MANITOBA

Under Sec. 21 of the *Workplace Health & Safety Act*:

- Director may issue a written order exempting a person or class of persons from any provision of a regulation to meet the special circumstances in a particular case but only if he/she is satisfied that no worker's health or safety is materially affected by the exemption and that any criteria set out in the regulations are met
- Director may impose any terms or conditions that he/she considers necessary to ensure workers' safety or health
- Director may suspend, revoke or revise the order if new information arises that would have been relevant to the decision of whether to grant it in the first place

NEW BRUNSWICK

Under Sec. 3(3) of the *OHS Act*:

- Employer can apply in writing to Chief Compliance Officer (CCO) for permission to deviate from any provision of the OHS regulations
- CCO can grant the authorization in writing if he/she is satisfied that: i.

it meets the criteria for deviation listed in the regulations, or, ii. if there are no such criteria, that it provides equal or greater protection to what's required in the regulations

NEWFOUNDLAND

Under Sec. 65(1) of the *OHS Act*:

- Minister can grant written authorization to deviate from a provision of the OHS regulations in writing if the minister is satisfied that it provides equal or greater protection to what's required in the regulations
- Minister may suspend, revoke or revise the authorization to deviate if new information arises that would have been relevant to the decision of whether to grant it in the first place

NOVA SCOTIA

Under Sec. 83 of the *OHS Act*:

- OK to apply to Director for authorization to deviate from a provision of the OHS regulations if application is in writing, lists the necessary technical information and includes information on the 'benefits and drawbacks' to be expected at the workplace if it's accepted
- Applicant must also pay any fees required by regulations
- Director has 28 days to decide on application; decision must be in writing and list written reasons
- Director may grant application if he/she is satisfied that it provides equal or greater protection to what's required in the regulations, subject to any terms or conditions the Director deems advisable
- Unless JHSC, health and safety rep or, if there is no JHSC or safety rep, the workers agree otherwise, the applicant must post copy of application for 28 days and give a copy to JHSC or safety rep
- Director may grant acceptance in writing, subject to any conditions it deems necessary to ensure health and safety
- Applicant must post copy of Director's decision in a conspicuous place at the work site for: i. 7 days if the application is denied; or ii. for as long as the deviation remains in effect if it's granted
- Director may suspend, revoke or revise the deviation if new information arises that would have been relevant to the decision of whether to grant it in the first place

ONTARIO

OHS Act doesn't say anything about exemptions or variances, however, certain industry-specific OHS regulations provide for them without requiring specific written approval, including:

- The *Industrial Establishments Regulations* (Sec. 2) says that an 'employer, owner or constructor may vary a procedure. . . or the composition, design, size or arrangement of a material, object, device or thing' required by the Regulations as long as they provide at least equivalent protection
- The *Construction Projects Regulations* (Sec. 3) says that an employer, owner or constructor may vary a procedure or the composition, design, size or

arrangement of a material, object, device or thing required by the Regulations, if: (a) if the procedure, composition, design, size or arrangement as varied affords at least equal protection; and (b) the employer, owner or constructor gives the JHSC or safety representative written notice of the varied procedure, composition, design, size or arrangement

PRINCE EDWARD ISLAND

Under Sec. 35 of the *OHS Act*, the Director may issue written decision to approve written application for an exemption from any provision of the OHS regulations or a code of practice but only if the Director is satisfied the exemption won't 'materially' affect a worker's occupational health and safety

QUÉBEC

No general provision for exemptions or variances, but regulations make allowances for substitutions of equivalent safety precautions for certain requirements

SASKATCHEWAN

Under Sec. 3-85 of the *Sask. Employment Act*, the director may issue written decision to approve written application for an exemption from any provision of the OHS regulations or a code of practice but only if the director is satisfied the exemption won't 'materially' affect a worker's health and safety

NORTHWEST TERRITORIES & NUNAVUT

No general provision for exemptions or variances, but OHS regulations make allowances for substitutions of equivalent safety precautions for certain requirements

YUKON

Under Sec. 1.03 of the *OHS Regulations*:

- If employer applies in writing, director may modify application of an OHS regulations requirement on the grounds of availability of equipment or improvements or availability of alternate processes or procedures
- Employer seeking a modification must demonstrate, at a minimum, that modification provides an equal or greater level of protection for worker health and safety
- Director may require the employer, at the employer's expense, to provide evidence from a professional engineer or other acceptable expert on the proposed modification