

When Are Required OHS Controls “Practicable” to Implement?



OHS laws require you to adopt “practicable” safety measures but don’t explain what “practicable” means.

The OHS laws can be confusing, especially the parts that require you to adopt health and safety measures that are “practicable” or “reasonably practicable” without defining those terms. So, how can you tell if a required measure is “practicable” or “reasonably practicable”? And what are you supposed to do if you determine that the measure is **not** “practicable” or “reasonably practicable”? Here’s a legal briefing enabling you to answer both of these questions.

What the Laws Require

The terms “practicable,” “reasonably practicable” and/or “impracticable” appear in OHS laws as a qualifying adjective to certain required health and safety controls. Examples:

- Under the federal COHS Regulations, the inside wall of an open-top bin, hopper, vat, pit or other uncovered open-top enclosure must be fitted with a fixed ladder, unless the operations carried on in the enclosure make such a fitting impracticable;
- The Alberta OHS Code requires employers to ensure that externally exhausted air from a ventilation system is prevented from entering a work site, if reasonably practicable;
- In BC, workers can’t enter or remain in any place where there’s a danger of engulfment or entrapment by loose materials unless measures are taken, where practicable, to control these risks; and
- Ontario OHS regulations for construction projects specify that, if practicable, a worker who’s receiving a load or engaged in sinking a shaft must be positioned so that no load or part of a load carried by a crane or similar hoisting device passes over the worker.

How to Comply

Here’s what to do when dealing with laws that require practicable or reasonably practicable measures.

Step 1: Determine If Measure Is Practicable or Reasonably Practicable

While all 14 jurisdictions use the terms “practicable” and “reasonably practicable” (**exception:** BC, NB and ON use the former term but not the latter), only 3—NS, PEI, SK—specifically define what the terms mean. The good news is that the government OHS regulatory agencies provide guidelines explaining the terms. And because the official definitions and unofficial guidelines say pretty much the same things, we can figure out what “practicable” and “reasonably practicable” actually mean.

The first key point is that the terms **aren't** interchangeable:

- **Practicable** basically means something which can be done with current knowledge, technology and invention;
- **Reasonably practicable** means something which is practicable unless the employer or other person required to implement the control can show that there's a “gross disproportion” between the safety benefit of the measure and “the cost, in time, trouble and money” to implement it.

In other words, when the law requires a “practicable” measure, it means that if you can implement it, you must unless doing so would enhance the hazard or create a new one. For example, while it may be **possible** to use lifelines connected to an outside anchor to rescue workers from confined spaces, it wouldn't be **practicable** to do so if those lifelines create entanglement hazards or interfere with other safety measures in place.

“Reasonably practicable” is a less demanding standard because it gives you discretion to weigh costs against benefits in determining whether to implement the measure. OHS guidelines from BC and shed light on the factors employers to consider when making this weighing, including:

- How frequently workers are exposed to the hazard the reasonably practicable measure is designed to control;
- The likely severity of resulting injuries or illnesses if the measure isn't implemented;
- The availability, suitability and effectiveness of alternative measures to control the hazard; and
- The costs of implementing the measure.

Federal OHS guidelines also list some of the questions to ask in assessing whether required health and safety measures are “reasonably practicable”:

- Technical aspects of complying—is it possible to comply and will compliance introduce other hazards or areas of non-compliance?
- Impact of complying—will the required measures advance workplace health and safety enough to make a noticeable improvement?
- Economic impact—would the amount of improvement to workplace health and safety justify the costs?
- Duration—how long will the measure remain in place?
- Degree of risk present—how significant is the existing hazard? An improvement in a high-risk area may be more beneficial to the workplace than the same improvement in a low-risk area.

Step 2: Make the Appropriate Implementation Decision

If you determine that the safety measure is reasonably practicable, you must implement it. But what happens if you come to the opposite conclusion? **Answer:** You don't have to implement it, provided that you implement alternatives that provide at least equivalent protection.

Keep in mind that the burden is on the party that wants to avoid implementing a "reasonably practicable" measure to show that that the costs of compliance greatly outweigh the benefits to workers and that the alternative control is at least equally effective. So, if you do determine that a required health and safety measure isn't reasonably practicable and implement an alternative, be sure to document how you arrived at that decision in case a government OHS inspector questions why you didn't implement the measure or are charged with an OHS violation for failing to do so.

In some cases, the OHS regulations will specify the alternatives to use if the primary measure isn't practicable or reasonably practicable. **Example:** Most OHS fall protection regulations require employers to install guardrails and other fixed barriers to prevent vertical falls but allow for use of fall protection systems instead if these barriers aren't practicable. They then list the types of systems to consider in order of preference, starting with restraints that prevent falls in the first place and proceeding to systems that arrest falls after they occur and ending with passive systems like safety nets that merely cushion falls.

Read about the Definitions of "Practicable" and "Reasonably Practicable" Across Canada