

Worker Reprisal Protections Under OHS Laws – Know The Laws of Your Province



OHS laws of all jurisdictions ban employers and their agents from taking or threatening termination, demotion, and other forms of so-called discriminatory or adverse against workers in reprisal for serving on JHSCs, refusing dangerous work, and engaging in other kinds of activities protected by the law. However, reprisal protections vary in terms of.

- What constitutes a protected activity.
- What constitutes a discriminatory action.
- How and by when workers must file reprisal complaints.
- The legal process for ruling on reprisal complaints, including who has the burden of proof.
- The potential penalties against employers who commit reprisals.
- The potential remedies available to workers found to be victims of reprisals.

Here's a summary of the reprisal rules in each part of Canada.

FEDERAL

1. No employer may dismiss, suspend, lay off, or demote an employee, impose a financial or other penalty on an employee, or refuse to pay an employee remuneration, or take any disciplinary action against or threaten to take any such

action against an employee because the employee:

- a. Has testified or is about to testify in an OHS law proceeding or inquiry.
- b. Has provided information to a person engaged in the performance of duties under the OHS laws regarding the conditions of work affecting the health or safety of the employee or any other employee of the employer.
- c. Has acted in accordance with sought the enforcement of any of the provisions of the OHS law (Canada Labour Code, Sec. 147).

2. An employee, or a person designated by the employee for the purpose (such as a union), who alleges that an employer has violated the above rule may complain in writing to the Board within 90 days after the date on which the complainant knew, or in the Board's opinion ought to have known, of the action or circumstances giving rise to the complaint (Canada Labour Code, Sec. 133(1)-(2)).

3. Upon receiving a complaint, the Board may assist the parties to settle the complaint or, if it decides not to do so and the complaint remains unsettled, hear and rule on the complaint (Canada Labour Code, Sec. 133(5)).

4. If the complainant presents evidence showing that the alleged contravention occurred, the burden of proof shifts to the employer to show that it didn't occur (Canada Labour Code, Sec. 133(6)).

5. If the Board determines that an employer has contravened section 147 (Item #1 above), it may order the employer to cease the contravention and also require the employer to:

- a. Permit any employee who's been affected by the contravention to return to the duties of their employment.
- b. Reinstate any former employee affected by the contravention.
- c. Pay any employee or former employee affected by the

contravention compensation not exceeding the sum that, in the Board's opinion, is equivalent to the remuneration that would, but for the contravention, have been paid by the employer to the employee or former employee.

d. Rescind any disciplinary action taken in respect of, and pay compensation to any employee affected by, the contravention, not exceeding the sum that, in the Board's opinion, is equivalent to any financial or other penalty imposed on the employee by the employer (Canada Labour Code, Sec. 134(1)).

ALBERTA

1. No person may take any disciplinary action against a worker because that worker acted in compliance with the OHS Act, regulations, OHS Code or an order issued under the Act (OHS Act, Sec. 18).

2. A worker who has reasonable cause to believe has been subjected to disciplinary action in contravention of section 18 may file a complaint with an officer within 180 days after the alleged contravention occurs, but not afterwards (OHS Act, Sec. 19(1)).

3. An officer who receives a complaint must prepare a written report of the worker's complaint, the investigation and the officer's findings and give the worker and the employer a copy of the report (OHS Act, Sec. 19(2)).

4. An officer may also refuse to investigate complaints they believe to be without merit, frivolous, trivial, vexatious, filed with improper motives or otherwise an abuse of process, but must notify the worker in writing of such refusal, in which case the worker may appeal the refusal to a Director (OHS Act, Sec. 19(3)).

5. If the officer believes that an illegal, disciplinary action has occurred in contravention of section 18 (Item #1 above), the officer may in writing order the person who contravened the section to do one or more of the following:

- a. Cease the disciplinary action.
- b. Reinstate the worker to the worker's former employment under the same terms and conditions under which the worker was formerly employed.
- c. Pay the worker not more than the equivalent of wages and benefits that the worker would have earned if the worker had not been subjected to disciplinary action.
- d. Remove any reprimand or other reference to the matter from the worker's employment records.
- e. Take other measures to prevent recurrence (OHS Act, Sec. 19(8)).

6. If an officer determines that disciplinary action has been taken against a worker who has acted in compliance with the Act, regulations, OHS Code or an order issued under the Act:

- a. There is a presumption in favour of the worker that the disciplinary action was taken against the worker because the worker acted in compliance with the Act, regulations, OHS Code or order, and
- b. The burden is on the employer or other person who violated section 18 (Item #1 above) to prove that the disciplinary action was taken against the worker for a reason other than that the worker acted in compliance with the Act, regulations, OHS Code or an order (OHS Act, Sec. 19(10)).

BRITISH COLUMBIA

1. For purposes of the following requirements, "prohibited action" is defined as including any act or omission by an employer or union, or person acting on behalf of an employer or union, that adversely affects a worker with respect to any term or condition of employment or membership in a union, including:

- a. Suspension, layoff, or dismissal.
- b. Demotion or loss of opportunity for promotion.

- c. Transfer of duties, change of location of workplace, reduction in wages, or change in working hours.
- d. Coercion or intimidation.
- e. Imposition of any discipline, reprimand or other penalty.
- f. The discontinuation or elimination of the job of the worker (Workers' Comp Act, Sec. 47).

2. An employer or union, or a person acting on behalf of an employer or union, must not take or threaten a prohibited action against a worker:

- a. For exercising any right or carrying out any duty in accordance with the OHS provisions, the regulations or an applicable order.
- b. For the reason that the worker has testified or is about to testify in any matter, inquiry or proceeding under this Act or the Coroners Act on an OHS or environmental issue.
- c. For the reason that the worker has given any information regarding conditions affecting the occupational health or safety or occupational environment of that worker or any other worker to:

- i. An employer or person acting on behalf of an employer.
- ii. Another worker or a union representing a worker.
- iii. An officer or any other person concerned with the administration of the OHS provisions (Workers Comp Act, Sec. 48).

3. If the Board determines that the contravention occurred, it may make an order requiring one or more of the following:

- a. That the employer or union cease the prohibited action.
- b. That the employer reinstate the worker to their former employment under the same terms and conditions.
- c. That the employer pay, by a specified date, the wages required to be paid by the OHS provisions or the

regulations.

d. That the union reinstate the membership of the worker in the union.

e. That any reprimand or other references to the matter in the employer's or union's records on the worker be removed.

f. That the employer or the union pay the reasonable out-of-pocket expenses incurred by the worker by reason of the prohibited action.

g. That the employer or the union do any other thing that the Board considers necessary to secure compliance with the OHS provisions and the regulations (Workers' Comp Act, Sec. 50(2)).

MANITOBA

1. No employer, union or person acting on behalf of an employer or union may take or threaten a reprisal against a worker for:

a. Exercising a right under or carrying out a duty in accordance with the WSH Act or regulations.

b. Testifying in a proceeding under the Act.

c. Giving information about workplace conditions affecting the safety, health or welfare of any worker to:

i. An employer or a person acting on behalf of an employer.

ii. A safety and health officer or another person concerned with the administration of the WSH Act.

iii. Another worker or a union representing a worker.

iv. A committee or a representative.

d. Performing duties or exercising rights as a member of a committee or as a representative.

e. Refusing to do dangerous work under section 43 of the WSH Act.

f. Taking reasonable action at the workplace to protect the safety or health of another person.

g. Complying with the Act or the regulations or code of practice under the Act, or an order or decision made under the Act.

h. Attempting to have this Act or the regulations enforced (WSH Act, Sec. 42(1)).

2. An employer who fails to pay wages or benefits to a worker when required to do so by the Act is also deemed to have taken a reprisal against the worker under this section (WSH Act, Sec. 42(2)).

3. A worker who believes on reasonable grounds that the employer or union has taken a reprisal against them may refer the matter to a safety and health officer within 6 months after the date of the alleged reprisal (WSH Act, Sec. 42.1(1)).

4. If a safety and health officer decides that an employer or union has taken a reprisal against a worker for a reason described in section 42 (Item #1 above) the officer must make an order requiring the employer or union to do one or more of the following:

a. Stop the reprisal.

b. Reinstate the worker to his or her former employment on the same terms and conditions.

c. Pay the worker any wages the worker would have earned had he or she not been wrongfully subjected to a reprisal and compensate the worker for loss of any benefits.

d. Remove any reprimand or other reference to the matter from any employment records the employer maintains about the worker (WSH Act, Sec. 42.1(2)).

5. If, in a prosecution or other proceeding under the Act, a worker establishes:

a. That a reprisal was taken against him or her; and

b. That the worker conducted himself or herself in a manner described in section 42 (Items #1 and #2 above).

it will be presumed that the reprisal was taken because of

the worker's conduct, and the burden will then shift to the employer or union to prove that the decision to take the reprisal was not influenced by the conduct (WSH Act, Sec. 42(4)).

NEW BRUNSWICK

1. No employer, supervisor or union may take or threaten to take any discriminatory action against an employee or intimidate or coerce any employee because the employee has sought enforcement of or acted in compliance with the OHS Act, regulations or an order made under the Act or regulations, or has sought enforcement of the Smoke-free Places Act or regulations or an order made under that Act as it relates to a place of employment under this Act (OHS Act, Sec. 24(1)).

2. An employee who complains that an employer, supervisor or union has violated the above requirement may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, or file a complaint in writing with the Commission no later than one year after the violation complained of (OHS Act, Sec. 25(1)).

3. The Commission must refer a complaint that it receives within the required time limit to an arbitrator that the Commission must appoint (OHS Act, Sec. 25(2)).

4. If an arbitrator finds that the action of the employer, supervisor, or union was discriminatory or that an employer or union threatened discriminatory action or intimidated or coerced an employee, it must make a written order which may include:

a. An order to the employer, supervisor or union to cease the discriminatory action.

b. An order to an employer to reinstate the employee to their former employment under the same terms and conditions.

c. An order to the employer to pay to the employee any wages the employee lost because the employee was wrongfully

discriminated against.

d. An order to the employer or union that any reprimand or other reference to the matter in the employer's or union's records on the employee's conduct be removed (OHS Act, Sec. 26(3)).

5. After investigating a complaint, an arbitrator must give its findings in writing with reasons and any order it makes to the Commission, the employer or union and the employee (OHS Act, Sec. 26(3)).

NEWFOUNDLAND & LABRADOR

1. An employer or union may not take a discriminatory action against a worker by dismissing the worker or by deducting wages, salary or other benefits, or by taking other disciplinary action against the worker:

a. Because of the worker's participation in or association with the workplace committee, worker health and safety representative or workplace health and safety designate, or because the worker is a worker health and safety representative or workplace health and safety designate.

b. Because the worker has testified or is about to testify in a proceeding or inquiry under the OHS Act or regulations.

c. Because the worker has given information to the Workplace, Health, Safety and Compensation Commission, an officer or another person concerned with the administration of the Act or the regulations concerning the health, safety and welfare of workers at the workplace.

d. Because the worker has reasonably refused to work under section 45 of the Act (OHS Act, Sec. 49).

2. If disciplinary action is taken against a worker or the worker is dismissed following an act by the worker under section 49 (Item #1) above, the disciplinary action or dismissal will be considered to be , in the absence of

evidence to the contrary, discriminatory (OHS Act, Sec. 50).

3. A worker who alleges that the employer has taken discriminatory action against the worker for a reason set out in section 49 may:

- a. Follow the grievance procedure for discriminatory action, if any, set out in if a collective agreement between the worker's union and employer; or
- b. Apply to the board for a determination as to whether the action was discriminatory (OHS Act, Sec. 51(1)).

4. A worker who alleges that the union took discriminatory action against the worker for a reason set out in section 49 may apply to the board for a determination as to whether the action was discriminatory (OHS Act, Sec. 51(2)).

5. If the board finds that an action was discriminatory it must:

- a. Order the employer to reinstate the worker under the same terms and conditions.
- b. Order the employer to pay or make up to the worker lost wages, salary and other benefits.
- c. Order that a reference to the dismissal or disciplinary action on the employer's records be deleted.
- d. Order the reinstatement of the worker to the worker's trade union where the worker has been expelled by the union (OHS Act, Sec. 52(1)).

NOVA SCOTIA

1. No employer or union may take, or threaten to take, a reprisal against an employee because the employee has acted in compliance with the OHS Act or regulations or an order or direction made thereunder or has sought the enforcement of the Act or the regulations or because:

- a. Of the participation of the employee in, or association with, a committee or the employee has sought the

establishment of a committee or performed functions as a committee member.

b. Of the association of the employee with a representative or the employee has sought the selection of a representative or performed functions as a representative.

c. The employee has refused to work under Section 43(1) of the Act.

d. The employee has sought access to information to which the employee is entitled by this Act or the regulations, or has been assigned the role of observer under Section 42 of the Act.

e. The employee has testified or is about to testify in any proceeding or inquiry under the Act or regulations.

f. The employee has given information to the committee, a representative, an officer or other person concerned with the administration of the Act or regulations with respect to the health and safety of employees at the workplace, unless the employer or union, as the case may be, establishes that such action is solely motivated by legitimate business reasons (OHS Act, Sec. 45(2)).

2. In an inquiry into a reprisal complaint, the employer or union has the burden of proving that there wasn't a reprisal (OHS Act, Sec. 45(3)).

3. An employee who complains that an employer or a union has taken, or threatened to take, a reprisal may:

a. If the employee is not subject to a collective agreement under which the employee is entitled to file a grievance, within 30 days, make a complaint in writing to an officer.

b. Where the employee is subject to a collective agreement under which the employee is entitled to file a grievance:

i. Have the complaint dealt with by final and binding arbitration under the collective agreement, or

ii. Within 30 days, make a complaint in writing to an officer, if an arbitrator hasn't taken jurisdiction over the matter under the collective agreement, in

which case the matter must be dealt with by the arbitrator under the collective agreement (OHS Act, Sec. 46(1)).

4. An officer that receives a complaint must investigate the complaint and:

- a. Issue an order specifying the provision of the Act or the regulations that has been contravened; or
- b. Determine that there are no grounds upon which to issue an order, and so notify the complainant (OHS Act, Sec. 46(2)).

5. If the officer determines that an employer has failed to pay wages, salary, pay or a benefit entitlement, the officer's order issued in accordance with Item #4(a) must require, by a specified date:

- a. The employer to pay the wages, salary, pay, or other benefits required; or
- b. The employer or the union to do the things that the officer believes are necessary to secure compliance with the OHS Act and regulations (OHS Act, Sec. 46(3)).

6. If the officer determines that a reprisal has been taken or threatened against an employee, the order issued in accordance with Item #4(a) above must require, by a specified date:

- a. The employer to reinstate the employee under the same terms and conditions.
- b. The employer to pay any wages, salary, pay or other benefits that the employee would have earned but for the reprisal.
- c. That any reprimand or other references to the matter in the employer's records on the employee be removed.
- d. The reinstatement of the employee to the union and the payment by the union to the employee of any wages, salary, pay or other benefits that the employee would have earned but for the reprisal.

e. The employer or the union to do the things that the officer believes are necessary to secure compliance with the OHS Act and regulations (OHS Act, Sec. 46(4)).

NORTHWEST TERRITORIES

1. It's an OHS offence for an employer or person acting on an employer's behalf or person in charge of an establishment to discharge, suspend or discipline, or threaten to discharge, suspend or discipline, or otherwise discriminate or threaten to discriminate against a person because that person:

- a. Has testified or is about to testify in any proceeding or inquiry under the Act.
- b. Has given information to the Commission or a safety officer regarding conditions of work affecting the health or safety of that person or of any of the workers with whom that person works.
- c. Is a member of a Committee or is an occupational health and safety representative or exercises the powers or performs the duties as a member of a Committee or an occupational health and safety representative.
- d. Has exercised his or her right to refuse to work under section 13 of the Act (Safety Act, Sec. 22(1)(c)).

2. If there's a conviction under the above provision, the court may, in addition to any other punishment, order the employer:

- a. To cease the disciplinary or discriminatory action.
- b. To pay compensation for loss of employment to the worker that, in the opinion of the court, would have accrued to the worker up to the date of conviction but for the discharge, suspension, or disciplinary or discriminatory action.
- c. To reinstate the worker to his or her former position on a date that, in the court's opinion, is just and proper in the circumstances and under the same terms and conditions

under which the worker was formerly employed.

d. To remove any reference to the discharge, suspension, disciplinary, or discriminatory action from the worker's record (Safety Act, Sec. 22(3)).

NUNAVUT

1. It's an OHS offence for an employer or person acting on an employer's behalf or person in charge of an establishment to discharge, suspend or discipline, or threaten to discharge, suspend, or discipline, or otherwise discriminate or threaten to discriminate against a person because that person:

a. Has testified or is about to testify in any proceeding or inquiry under the Act.

b. Has given information to the Commission or a safety officer regarding conditions of work affecting the health or safety of that person or of any of the workers with whom that person works.

c. Is a member of a Committee or is an occupational health and safety representative or exercises the powers or performs the duties as a member of a Committee or an occupational health and safety representative.

d. Has exercised his or her right to refuse to work under section 13 of the Act (Safety Act, Sec. 22(1)(c)).

2. If there's a conviction under the above provision, the court may, in addition to any other punishment, order the employer:

a. To cease the disciplinary or discriminatory action.

b. To pay compensation for loss of employment to the worker that, in the opinion of the court, would have accrued to the worker up to the date of conviction but for the discharge, suspension or disciplinary or discriminatory action.

c. To reinstate the worker to his or her former position on a date that, in the court's opinion, is just and proper in

the circumstances and under the same terms and conditions under which the worker was formerly employed.

d. To remove any reference to the discharge, suspension, disciplinary, or discriminatory action from the worker's record (Safety Act, Sec. 22(3)).

ONTARIO

1. No employer or person acting on an employer's behalf may:

a. Dismiss or threaten to dismiss a worker.

b. Discipline or suspend or threaten to discipline or suspend a worker.

c. Impose any penalty upon a worker.

d. Intimidate or coerce a worker because the worker has acted in compliance with the OHS Act or regulations or an order made thereunder, has sought the enforcement of the Act or regulations or has given evidence in a proceeding in respect of the enforcement of this Act or regulations or in an inquest under the Coroners Act (OHS Act, Sec. 50(1)).

2. A worker who complains that an employer or person acting on its behalf has committed a reprisal in violation of the above may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Board (OHS Act, Sec. 50(2)).

3. An inspector may refer a reprisal matter to the Board if:

a. The worker has not had the matter dealt with by final and binding settlement by arbitration under a collective agreement or filed a complaint with the Board; and

b. The worker consents to the referral (OHS Act, Sec. 50(2.1)).

4. The Board may inquire into any reprisal complaint filed or referral made in accordance with the above (OHS Act, Sec. 50(3)).

5. In an inquiry by the Board into such reprisal complaint or

referral, the employer or person acting on its behalf has the burden of proving that it did not act contrary to subsection (1) (Item #1 above) (OHS Act, Sec. 50(5)).

6. Where on an inquiry into a complaint or referral, the Board determines that a worker has been discharged or otherwise disciplined by an employer for cause and the contract of employment or the collective agreement, as the case may be, doesn't contain a specific penalty for the infraction, the Board may substitute such other penalty for the discharge or discipline as to the Board seems just and reasonable in all the circumstances (OHS Act, Sec. 50(7)).

PRINCE EDWARD ISLAND

1. No employer or union may:

- a. Take discriminatory action against a worker.
- b. Threaten to take discriminatory action against a worker.
- c. Impose a penalty on a worker.
- d. Intimidate or coerce a worker because the worker has sought the enforcement of or acted in accordance with the OHS Act, regulations or an order made under the Act or regulations (OHS Act, Sec. 30(1)).

2. A worker who complains that an employer or a union has violated section 30 above may have the matter dealt with either by final and binding settlement by arbitration under a collective agreement, if any, or by filing a complaint in writing with the Board (OHS Act, Sec. 31(1)).

3. On receipt of a complaint, the Board must, having satisfied itself that all required steps to resolve the complaint have been exhausted, refer the complaint to an arbitrator whom the Board appoints (OHS Act, Sec. 31(2)).

4. Where an arbitrator finds that the action of an employer or union contravened subsection 30(1) (Item #1 above), it must make a written order that may include:

- a. An order to the employer or union to cease the

discriminatory action.

b. An order to an employer to reinstate the worker to the worker's former employment under the same terms and conditions.

c. An order to the employer to pay to the worker any wages the worker lost because the worker was wrongfully discriminated against.

d. An order to the employer or union that a reprimand or other reference to the matter in the employer's or union's records on the worker's conduct be removed (OHS Act, Sec. 31(4)).

QUÉBEC

1. No employer may dismiss, suspend or transfer a worker, practice discrimination, or take reprisals against him or impose any other penalty on him on the ground that the worker exercised his refusal rights under Section 12 of the OHS Act (but may, within the 10 days following a final decision, dismiss, suspend or transfer the worker or impose another penalty on him if the worker abused his right) (OHS Act, Sec. 30).

2. No employer may dismiss, suspend or transfer a safety representative or the person replacing him, practice discrimination, or take reprisals against him or impose any other penalty on him on the ground that the safety representative or person replacing him exercised a function conferred on him by the OHS Act (but may, within the 10 days following a final decision respecting a worker's exercise of his right of refusal, may dismiss, suspend or transfer the safety representative or person replacing him or impose another penalty on him if the representative or person abused his function) (OHS Act, Sec. 31).

3. No employer may dismiss, suspend or transfer a worker, practice discrimination or take reprisals against him, or impose any other penalty on him on the ground that the worker is a member of a health and safety committee (but may dismiss,

suspend, or transfer a worker or impose any other penalty on him if he abused his function on a health and safety committee) (OHS Act, Sec. 81).

4. No employer may dismiss, suspend, or transfer a safety representative, practice discrimination or take reprisals against him, or impose any other penalty on him on the ground that he performed the functions of a safety representative (but may dismiss, suspend, or transfer the safety representative or impose any other penalty on him if he abused his functions) (OHS Act, Sec. 97).

5. Any worker who believes he has been dismissed, suspended, transferred, or subjected to a discriminatory measure or reprisals or any other penalty for exercising his rights or functions under the OHS Act or the regulations may resort to the grievance procedure provided by the collective agreement applicable to him or, if he so elects, submit a complaint in writing to CNESST within 30 days of the penalty or measure about which he's complaining (OHS Act, Sec. 227).

SASKATCHEWAN

1. No employer may take discriminatory action against a worker because the worker:

a. Acts or has acted in compliance with Part III of the Sask Employment Act (OHS), Part V of that Act (radiation safety), the OHS and radiation safety regulations, a code of practice issued under section 3 84 of the Act, or a notice of contravention or requirement or prohibition contained in such notice of contravention.

b. Seeks or has sought the enforcement of Part III of the Sask Employment Act (OHS), Part V of that Act (radiation safety), or the OHS and radiation safety regulations.

c. Assists or has assisted with the activities of an occupational health committee or occupational health and safety representative.

d. Seeks or has sought the establishment of an occupational

health committee or the designation of an occupational health and safety representative.

e. Performs or has performed the function of an occupational health committee member or occupational health and safety representative.

f. Refuses or has refused to perform an act or series of acts pursuant to section 3 31 of the Act.

g. Is about to testify or has testified in any proceeding or inquiry under Part III or V of Act or regulations.

h. Gives or has given information to an occupational health committee, an occupational health and safety representative, an occupational health officer or other person responsible for administering the OHS laws.

i. Gives or has given information to a radiation health officer.

j. Is or has been prevented from working because a notice of contravention with respect to the worker's work has been served on the employer.

k. Has been prevented from working because an order has been served under the radiation safety regulations on an owner, vendor, or operator (Sask Employment Act, Sec. 3-35).

2. Workers who, on reasonable grounds, believe that the employer has taken discriminatory action against them may refer the matter to an occupational health officer (Sask Employment Act, Sec. 3-36(1)).

3. If an occupational health officer decides that an employer has taken discriminatory action against a worker for a reason mentioned in section 3 35, it must serve a notice of contravention requiring the employer to:

a. Cease the discriminatory action.

b. Reinstatement the worker to their former employment on the same terms and conditions.

c. Pay to the worker any wages they would have earned had they not been wrongfully discriminated against.

d. Remove any reprimand or other reference to the matter from any employment records maintained by the employer with respect to that worker (Sask Employment Act, Sec. 3-36(2)).

4. If an occupational health officer decides that no discriminatory action has been taken against a worker for any of the reasons set out in section 3 35, the occupational health officer they must advise the worker of the reasons for that decision in writing (Sask Employment Act, Sec. 3-36(3)).

5. If discriminatory action has been taken against a worker who has acted or participated in an activity described in section 3 35:

a. In any prosecution or other proceeding, there is a presumption in favour of the worker that the discriminatory action was taken against the worker because the worker acted or participated in an activity described in section 3 35; and

b. The burden is on the employer to show that the discriminatory action was taken against the worker for good and sufficient other reason (Sask Employment Act, Sec. 3-36(4)).

YUKON

1. An employer or trade union, or person acting on behalf of one, must not take or threaten reprisal against a worker for doing any of the following:

a. Exercising a right or performing a WSC duty.

b. Testifying in a WSC proceeding.

c. Giving information about workplace conditions that affect the health and safety of any worker to:

i. An employer or a person acting on behalf of an employer.

ii. The board, an officer, or other person whose duties include the administration of the WSC law.

- iii. Another worker or a trade union that represents a worker.
- iv. A committee or a worker health and safety representative.

- d. Exercising a right or performing a duty as a committee member or as a worker health and safety representative.
- e. Refusing to perform work as part of a work refusal under Sec. 47(1) of the Act.
- f. Taking reasonable action at the workplace to protect the health and safety of another person.
- g. Complying with the Act or regulations.
- h. Attempting to have the Act or regulations enforced (WSC Act, Sec. 53(1)).

2. A worker who believes on reasonable grounds that an employer or trade union has taken or threatened to take reprisal against them for a reason listed above may elect to make a written complaint in accordance with the dispute resolution process set out in a collective agreement, or to the board (WSC Act, Sec. 54(1)).

3. The employer must provide a copy of every reprisal complaint that a worker makes to the board when the complaint is made (WSC Act, Sec. 54(3)).

4. A worker who makes a reprisal complaint to the board must do so within 21 days after the date of the alleged reprisal (WSC Act, Sec. 54(4)).

5. The board must refer a reprisal complaint to an arbitrator unless it believes that the complaint is without merit or wasn't made within the required 21 days (WSC Act, Sec. 55(2)+(3)).

6. An arbitrator must provide written reasons for its decision to the board, the employer or trade union that the complaint is about, and worker who made the complaint (WSC Act, Sec. 55(6)).

7. An arbitrator who finds that an employer or a trade union contravened section 53 (Item #1 above) may make an order requiring the employer or trade union to take one or more of the following actions:

- a. Stop the reprisal.
- b. Reinstate the worker to their former employment under the same terms and conditions.
- c. Pay the worker any wages or benefits that they lost because of the reprisal.
- d. Remove any reprimand or other reference to the matter from the records of the employer or the trade union about the worker.
- e. Pay the board all or part of the costs of the proceeding.
- f. Take any other measures for compliance with the Act or regulations (WSC Act, Sec. 55(6)).

8. If, in a reprisal proceeding, a worker establishes that an employer or trade union took an action included in the definition "reprisal" against the worker after the worker did a thing described in subsection 53(1) (Item #1 above):

- a. It is presumed that the employer or trade union took reprisal against the worker; and
- b. The burden shifts to the employer or trade union to prove that the action taken was not a reprisal taken against the worker (WSC Act, Sec. 56).