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Managing Contractors

Employers bear primary responsibility for OHS compliance at their work site. But what about sites where workers of more than one employer work? As a safety coordinator, understanding OHS multi-employer site rules is critical to managing your company's liability risks, especially if you have contractors and subcontractors working at your site.

The Rules of Multi-Employer Site OHS Liability

At multi-employer sites, one employer must be the point person for implementing and coordinating the various safety measures, setting up the required JHSC, interfacing with the regulators and, ultimately, taking the hit if an OHS violation occurs.

Historically, that role has fallen to the employer that owns the site ("host employer"). The theory: Since the host owns and controls the site, it's responsible for

the safety of all workers that work there—including not just its own payroll employees but also workers of outside contractors hired to work at the site.

Did You Know? *Although now embedded into the OHS legislation of each jurisdiction, the theory of host employer liability for OHS violations at multi-employer sites dates back to a 1992 Ontario case finding a window cleaning company responsible for a subcontract worker's fatal fall from an improperly secured boatswain's chair, even though the subcontractor possessed expertise on window cleaning and supervised the work [R. v. Wyssen, 1992 CanLII 7598 (ON CA), Sept. 17, 1992].*

Delegating Liability to a Constructor

But owning the site doesn't always put the host employer in the best position to ensure the safety of work done there. This is especially true when an outside contractor is hired to run a big project ...continued on page 2

Give Your JHSC an Effectiveness Audit

As a health and safety pro, you understand that simply having an OHS program isn't much good if you don't regularly audit its effectiveness. The same principle applies to the joint health and safety committee (JHSC). The OHS laws say you must not only establish a JHSC (go to page 11 to see when JHSCs are required in your jurisdiction) but support, cooperate and consult with it. But what they don't require you to do is evaluate whether the JHSC is actually working effectively.

There is one notable exception. While several provinces recommend the practice, in April 2017, BC (OHS Regs. Sec. 3.26) became the first province to make it mandatory for employers to perform an annual evaluation of JHSC effectiveness. Even if you're not in BC, JHSC audits are highly advisable. Here's how to conduct them based on BC requirements, OHS guidelines from other provinces and private sector best practices.

A. How Often You should audit your JHSC at least once a year.

B. When Although BC doesn't stipulate a date, a good approach is to incorporate JHSC evaluation into your annual OHS program audit.

C. Who In BC, the evaluation must be performed by either:

- The employer or its representative; or
- The JHSC co-chairs or members designated by each co-chair.

If the employer or a rep does the audit, he/she must get the input of each JHSC co-chair.

D. How to Prepare You'll need to gather the materials you need to evaluate JHSC effectiveness, including:

- The JHSC's terms of reference, bylaws and procedures;
- Minutes of JHSC meetings;

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involving workers of multiple companies. Accordingly, OHS laws allow host employers to delegate primary responsibility for OHS compliance to an outside contractor in charge and control of the work. We'll refer to this contractor as a "constructor" even though terms vary by jurisdiction:

Term for Employer Responsible at Multi-Employer Site	Jurisdictions Where Term Is Used
Constructor	Ontario, Nova Scotia, Prince Edward Island
Prime contractor	BC, Alberta, Saskatchewan, Manitoba
Principal contractor	Québec, Newfoundland, Northwest Territories, Nunavut, Yukon
Contracting employer	New Brunswick

If it doesn't designate a constructor, the host employer itself is deemed the constructor.

Limits on Constructor Arrangements

While allowed in 13 of 14 jurisdictions (federal is the lone exception), use of constructor arrangements is subject to limits.

Construction Projects Only In Ontario, Quebec, Manitoba, Nova Scotia, Prince Edward Island and Yukon, constructor arrangements are limited to "construction projects." However, the term "construction project" is defined broadly to include construction work done at non-construction sites, e.g., erecting or demolishing a building on a factory site.

Any Multi-Employer Site In BC, Saskatchewan, New Brunswick, Newfoundland, NW Territories and Nunavut, constructors are either required or allowed for any kind of multi-employer site project.

Hybrid In Alberta, constructors (called "prime contractors" in that province) are mandatory for multi-employer construction and oil and gas sites and permitted at other multi-employer sites.

Duties that Can't Be Delegated Designating a constructor doesn't relieve the host employer of all its OHS obligations. Residual OHS duties that the host employer can't delegate include:

- Notifying the constructor of the specific site hazards affecting the health and safety of workers carrying out the project, e.g., the presence of confined spaces;
- Giving the constructor a list of all hazardous substances used, stored or handled at the site;
- Working with the constructor to coordinate safety procedures and measures, e.g., for de-energizing machinery or equipment to be serviced during the project;
- Providing the constructor the site-related OHS information

and materials it needs to meet its reporting and notification duties related to the project.

Takeaway: 3 Steps to Take

Safety coordinators should engage in a 3-prong strategy to manage these residual liability risks associated with designating a constructor for projects at their site:

Pre-Contract Diligence Ensure that the contractor designated constructor is selected on the basis of its health and safety record and subjected to a rigorous H&S pre-qualification audit.

Contract Negotiation Ensure that the contract includes key provisions protecting your company in case the constructor commits an OHS violation, including language requiring the constructor to:

- Comply with all applicable health and safety requirements in carrying out the work;
- Implement an effective, comprehensive and compliant OHS program;
- Immediately notify you of any health and safety incidents;
- Send you weekly OHS progress reports in connection with the work;
- Coordinate and communicate with the site JHSC or health and safety representative; and
- "Indemnify" or pay you back for any losses you incur as a result of its violations.

You should also have the right to terminate the constructor if it doesn't meet its safety obligations.

Post-Contract Monitoring Once the contract is signed and work begins, keep a close eye on the project and whether the constructor is meeting its safety duties focusing on, at a minimum:

- **Training:** Is appropriate instruction and training being provided to all workers?
- **Supervision:** Are supervisors performing their duties and exercising adequate oversight over the work?
- **Hazard notification:** Have all workers been notified of the specific hazards of your worksite, e.g., the hazardous substances stored?
- **Safe work procedures:** Are workers following applicable safety procedures and policies?
- **PPE:** Are workers properly using required PPE and safety equipment?
- **Accountability:** Are workers being held accountable for safety violations including via discipline where necessary?

TOOL: MODEL CONTRACTOR H&S PRE-QUALIFICATION QUESTIONNAIRE

ABC COMPANY CONTRACTOR H&S PRE-QUALIFICATION QUESTIONNAIRE

INSTRUCTIONS: Contractors wishing to bid for jobs to be performed at ABC Company work sites and facilities must complete this Questionnaire and submit it to the ABC Company EHS Coordinator prior to submitting their bids.

A. GENERAL INFORMATION:

Contractor Name: _____ Address/Phone: _____

B. INSURANCE/WORKERS' COMPENSATION

1. Attach documents demonstrating your coverage for damages to and incidents involving third parties including general liability insurance, automotive, umbrella policies, etc.
2. Is your company in good standing under the Workers' Compensation Board or authority of each jurisdiction in which it performs work? YES NO
If no, please explain. _____
3. Attach clearance letters, letters of good standing, rate sheets or other documents demonstrating proof of good standing under Workers' Compensation for each jurisdiction.

C. HEALTH & SAFETY PERFORMANCE

1. Please fill in the below charts for last year and previous 3 years with regard to your employees.

YEAR	HRS	F	LTI	LTF	TR	TRF	VI	KMS

Hrs = Total hours worked F = Fatalities LTI = Lost time injuries - a worker misses at least one day of work due to a work related injury LTF= Lost Time Frequency (Frequency = # of incidents x 200,000, divided by hours worked) TR = Total Recordable (medical aid+restricted duty+LTI) TRF = Total Recordable Frequency (Frequency = # of recordable incidents x 200,000, divided by hours worked) VI - Vehicle Incidents (work-related incidents which involve a worker-used vehicle on any roadway and which result in damages excluding normal wear and tear) Kms = Total Kilometers Driven

2. Has your company received any OHS stop-work orders, charges, convictions or fines in the past 3 years?
 YES NO If yes, please attach a note explaining the details, including current status or resolution.

D. HEALTH & SAFETY PROGRAM

1. Does your company have a written health and safety policy signed by management? YES NO Please attach. attach a description of your health and safety training program, including how often training is provided, in what format, topics covered, (e.g., housekeeping, lockout, emergency response, etc.), who provides training, etc.
2. Does your company have written safety policies and procedures, including clearly defined safety responsibilities for managers, supervisors and workers? YES NO Please attach.
3. How do you communicate your safety policies and procedures?
4. How often do managers/executives visit the worksite? Provide details.
5. Please attach a description of your on-site inspection program, including how often inspections are conducted, what they cover and who conducts them.
6. Please attach a description of your risk assessment procedures.
7. Please attach a description of your incident reporting and investigation procedures, including how near misses are reported.
8. Please attach a list of the names and qualifications of all supervisors you use to oversee work.
9. Do you provide on-the-job training to all workers? YES NO Please attach a description of how you notify workers of job-specific hazards.
10. Please attach a description of how you notify workers of job-specific hazards.
11. Do you discipline workers for committing health and safety violations? YES NO Please describe.
12. Please attach a description of your health and safety committee/ representative (or an explanation of why you don't have one), including its activities, frequency of meetings, etc.
13. Do you have a preventive maintenance program for tools and machinery?
14. Please attach a description of how you incorporate subcontractors' workers into your health and safety training and other programs.
15. Please attach a description of other programs, activities or information that you believe demonstrates that your company carries out its projects safely and in accordance with all health and safety requirements.

Name of Contractor's Safety Coordinator: _____ Contact Information: _____

Date: _____ Signature: _____



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Month In Review

A roundup of new legislation, regulations, government announcements, court cases and arbitration rulings.

Visit OHSInsider.com for the complete Month-In-Review.

Workplace Harassment

May 24: Keep your eye on [Bill C-65](#), which is getting second reading in the Senate and is likely to pass. While it builds on previous models like Ontario Bill 168 by requiring employers to adopt programs to prevent, investigate and respond to harassment incidents, Bill C-65 also includes novel features that may prove a template for OHS harassment laws in other jurisdictions, including:

- Stronger privacy and reprisal protections for workers who complain of harassment
- New worker right to have complaints investigated by neutral third parties and resolved via informal resolution
- Worker right to assert claims against employer for not protecting them from violence/harassment for up to 3 months after employment ends.

FED

Cannabis

May 28: Making up for its late start, Newfoundland is making significant progress in adopting legislation to implement cannabis legalization. The headliner for workplace safety is the extension of current indoor smoking rules to cannabis smoking and vaping, including the employer's right to set up designated smoking/vaping rooms.

NL

Workplace Harassment

May 15: Public review ended on a proposal to make prevention of workplace harassment an express OHS duty and require employers to implement a written harassment prevention policy listing:

- Assurances of workers' right to a harassment-free workplace
- A commitment to investigate harassment complaints
- Harassment complaint and investigation procedures
- Assurances that workers will not suffer reprisals for reporting harassment.

PE

Traffic Safety

June 8: That's the deadline to comment on a government proposal to overhaul and modernize Nova Scotia's traffic safety laws, including new rules covering everything from vehicle registration to distracted driving and speed limits. The plan is to go through the comments and submit a bill in the Assembly this fall.

NS

Fall Protection

May: Consultations were held on updating current OHS fall protection regulations including with regard to:

- Guardrails requirements for ramps
- When fall protection must be provided to workers
- Barricades, gates or warning lines for trenches
- Standards for anchorage systems, components and fastenings.

QC

Fuel Tax Rebate

May 29: With no fanfare or even an explanation, Nunavut announced that it has cancelled its Fuel Tax Rebate Program, effective May 14, 2018.

NU

Spill Reporting

May 25: The GNWT launched a new state of the art online system to report and track oil and chemical spills. Of course, the 24-Hour Spill Report Line (1-867-920-8130) remains very much in operation.

NT

Workers' Comp Claims

May: Year to year claims totals and rates were flat. While total claims decreased fairly significantly, time loss injuries, severe injuries and fatalities were up.

MB

Traffic Safety

May 24: There were 39 total drug- and alcohol-related traffic deaths in Saskatchewan in 2017, according to the government. Although 34 of these deaths involved alcohol, total alcohol-related fatalities were down 40% year over year. The total number of drug/alcohol road injuries during the year was 340.

SK

Workers' Compensation

April 30: Lost-time injury rates remain below historic levels and LTI rates of other jurisdictions, but rates for Schedule 2 employers spiked 0.6% to 2.05%, the highest since 2009. Meanwhile, claim volume is up on both the Schedule 1 and 2 sides.

ON

Workers' Compensation

June 18: That's the deadline to comment on proposed changes to WorkSafeNB's policy ([Policy 21-215—Supplements to Compensation](#)) on payments to workers who get both workers' comp benefits and remuneration from an employment-related source.

NB

Resource Roads

July 23: That's the deadline to weigh on a proposal to create a regulation to ensure safe and environmentally sound construction, use and closure of resource roads throughout Yukon. The new regulation would cover controlled access roads that service the mining, aggregate, oil and gas industries.

YT

PPE

June 1: This was the deadline to comment on proposed changes to OHS Regs, Part 24, Diving, Fishing and Other Marine Operations, including new rules for the use and inspection of personal flotation devices and lifejackets including with regard to crew members of fishing vessels working alone.

BC

JHSCs—Exemptions

June 1: OHS regulations implementing the new JHSC and Health and Safety Representative rules also took effect listing:

- New procedures for employers/prime contractors to apply for approval of exceptions to JHSC/HSR rules
- Information employers/prime contractors must provide in such applications
- Criteria Director may consider in deciding whether to grant approval

AB

Spot the Safety Violation

Which PPE Is This Guy Missing?

- Hard hat [✓]
- Eye protection [✓]
- Safety gloves [✓]
- Protective footwear [✓]
- Respiratory protection [] ... uh oh ...

While this worker has most of the PPE he needs to operate that jackhammer safely, he's missing one critical piece: respiratory protection to keep him from breathing in the dust he's kicking up.

The Moral: Workers who use jackhammers, saws, grinders, and other tools that generate dust (or work at construction sites, oil rigs and other workplaces that contain high levels of dust in the air) need respiratory protection.

Give Them 3 Reasons to Pay Attention

1. A dusty workplace isn't just a sanitary issue but a potentially serious health hazard.
2. Dusts, or tiny particles in the air, can cause cancer, lung damage and other serious diseases if they get into your lung and blood stream—depending on the substance the dust is made out of (e.g., asbestos can cause a disease called mesothelioma or asbestosis).
3. One of the best ways to keep dusts from entering your workers' bodies is to ensure they do something the worker in this photo is not doing, namely, use appropriate respiratory protective equipment.

6 Basic Kinds of Respirators

Recognizing the need to use respiratory protection is half the battle. Explain that workers also need to select the right kind of respirator. Here's an overview of the 6 basic types of respirators and what each one can and can't be used for:

1. SINGLE-STRAP DUST MASKS (Non-NIOSH approved)

Can Be Used for: Less severe atmospheric hazards like pollen, allergens and non-toxic nuisance dusts.

Can't Be Used for: Hazardous atmospheres.

2. APPROVED FILTERING FACE PIECES (DUST MASKS)

Can Be Used for: Dust, mists, welding fumes, etc.

Can't Be Used for: Gases, vapors, toxic minerals like asbestos and toxic metals like lead.

3. HALF-FACE RESPIRATORS

Can Be Used for: Most vapors, acid gases, dust or welding fumes as long as the filter/cartridge matches the contaminant and is changed periodically.



Can't Be Used for: Oxygen deficient or IDLH (immediately dangerous to life and health) atmospheres, confined space work or particulates the cartridge/filter isn't designed to protect against.

4. FULL-FACE RESPIRATORS

Can Be Used for: Most vapors, acid gases, dust or welding fumes as long as the cartridge/filter matches the contaminant and is changed periodically.

Can't Be Used for: Oxygen deficient or IDLH atmospheres, confined space work or particulates the cartridge/filter isn't designed to protect against.

5. LOOSE-FITTING POWERED AIR-PURIFYING RESPIRATORS (PAPR)

Can Be Used for: Most vapors, acid gases, dust or welding fumes as long as the cartridge/filter matches the contaminant and is changed periodically (and the batteries to blowers are charged).

Can't Be Used for: Oxygen deficient or IDLH atmospheres, confined space work or particulates the cartridge/filter isn't designed to protect against.

6. SELF-CONTAINED BREATHING APPARATUS (SCBA)

Can Be Used for: Entry and escape from IDLH or oxygen-deficient atmospheres.

Can't Be Used for: Protection of workers with facial hair that gets between the face-piece sealing area of the mask and the face and interferes with the seal.

EHS COMPLIANCE

Two OHS Appeal Decisions To Be Aware Of

Two recent appeal decisions relating to serious Occupational Health and Safety ("OHS") prosecutions are ones to be aware of for every Occupational Health and Safety professional, Human Resources professional, In-house counsel, and Operations Managers responsible for implementing health and safety management systems.

The first was the appeal decision in the Sunrise Propane Energy Group prosecution. Sunrise had been found guilty, after a 14 day trial, of seven charges under the *Environmental Protection Act* and the *Occupational Health and Safety Act*, both of Ontario. Justice Akhtar, of the Superior Court of Justice, held that both the conviction and the sentence at the trial court was reasonably supported by the evidence, legal principles, and therefore was upheld. The Court held that the explosion and fire, that involved a fatality, at the Sunrise Propane Energy Group Distribution Centre in the north-east part of Metropolitan Toronto, did result in the contraventions of both the *Environmental Protection Act* and the *Occupational Health and Safety Act*.

With respect to the sentence appeal, the heavy double-barreled penalty, totalling \$5.3 million, was also upheld by the Superior Court of Justice. Affirming the fines and penalties, the Court said, "it is clear that an Appellant Court must give considerable deference to a sentence imposed by a trial judge and only interfere if that sentence is manifestly unfit ... the widespread damage and effects caused by the Appellants' reckless behaviour in conducting truck-to-truck transfers without license and with full knowledge of the risks associated with the practice ... there is nothing in the trial judge's decision that indicates error and I agree with the Respondent that the fine was consistent with other fatality cases" [*R. v. Sunrise Propane Energy Group, 2017 ONSC 6954.*]

Clearly the aggravating factors of a fatality, as well as operating without a license, as well as unsafely, were major factors in the harsh penalty issued by the trial court, and affirmed on the appeal.

The second appeal of note involves the tragedy of a criminal rampage in Moncton, New Brunswick, when four RCMP constables were killed in a targeted shooting, by gunman Justin Bourque in Moncton, New Brunswick. After the tragedy, the Federal Occupational Health and Safety Regulator investigated and laid charges under the *Canada Labour Code, Part II*. The Royal Canadian Mounted Police defended the charges at trial, but were convicted. The RCMP was ordered to pay \$550,000 for failing to properly arm and train its members arising from the shooting rampage. Judge Leslie Jackson handed down the sentence

in a packed courtroom in Moncton, New Brunswick, that included acting RCMP Commissioner Daniel Dubeau. The trial judge gave a clear and strong rebut to the RCMP's leadership for not acting sooner to ensure that frontline police officers were equipped with high-powered rifles that could have made, possibly, a difference in the lethal shooting rampage by Justin Bourque.

The stinging reasons for judgement in the sentencing, placed little responsibility for the tragedy on Bourque, and more on the senior management of the RCMP, for the criminal actions of Bourque. The RCMP was criticised for not having adequate "firepower" in the hands of RCMP officers, to deal with this unpredictable, unforeseeable event. The trial judge agreed that the RCMP had acted on 56 of the 64 recommendations in the report into the incident, but this was not necessarily sufficient to satisfy the prosecutor or the Court that there had not been a serious series of health and safety violations under the *Canada Labour Code*.

Recently, the RCMP announced it will not appeal the conviction, even though it was likely a difficult pill for the RCMP to swallow in that decision. The majority of the RCMP's penalty, \$300,000, will go towards a memorial scholarship fund at the University of Moncton, while another \$600,000 will go towards education funds for children of fatally injured RCMP officers. These "alternative penalties", as opposed to revenue from penalties, that goes into the general revenue fund of government, are permitted in some jurisdictions, such as the Federal regime, but not in other jurisdictions, such as the Province of Ontario.

These two cases indicate that in both extreme and unusual cases, when workers are critically or fatally injured, that Health and Safety Regulators across Canada are becoming more aggressive in their enforcement of the legislation. These decisions also indicate that there is high monetary penalties available when health and safety laws are not complied with, even if the ultimate tragedy was not intended, not easily foreseeable, and undoubtedly random in its occurrence.



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He also has a broad advisory practice in the areas of his expertise and is a trusted advisor to boards, executives and for and not-for profit corporations.

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Alberta Compliance Alert

Bill 30 Makes It Easier for Workers to Justify Work Refusals

Bill 30, which took effect on June 1, is the most important Alberta OHS law in over 3 decades—1976, to be precise. But among the many Bill 30 significant changes, one has flown under the radar: the rules governing when workers may initiate refusals of unsafe work.

What's At Stake: Refusal Rights & the IRS

The worker's right to refuse dangerous work is a core principle of Canadian OHS law. Explanation: In the US and most other industrial countries that have adopted OHS laws, just about all of the responsibility for making the workplace safe and healthy falls on the employer. Canada, though, is among a small handful of countries where OHS laws follow an Individual Responsibility System (IRS) in which responsibility for workplace health and safety is shared. Thus, while employers remain primarily liable, all stakeholders have responsibilities (and potential liabilities) for safe work, including the workers themselves.

Accordingly, OHS laws do things to empower workers to make an impact on workplace safety, e.g., by requiring employers to establish joint health and safety committees in which workers are represented. The right to refuse dangerous work is the ultimate backstop. Thus, while the hope is that JHSCs and the like will ensure a safe workplace, when and if things don't work out, workers can invoke their refusal rights as a last resort.

Alberta's Old Refusal Rights

Because work refusals are so disruptive, they're subject to strict limitations to prevent abuse. Thus, for example, there are specific procedures workers must follow to initiate a

refusal. Another limitation has to do with when a work refusal is justified. While all jurisdictions impose limits, Alberta's refusal rights (under Section 35 of the OHS Act) used to be the strictest in Canada:

- While all jurisdictions require that the fear of danger driving a refusal to be "reasonable," in Alberta a worker's fear had to be not just "reasonable" but also "probable"; and
- Alberta was the only province specifically requiring that the danger be "imminent." Result: It didn't apply to hazards posing long-term health and safety dangers, e.g., exposure to asbestos or mental stressors.

Bill 30 Refusal Rights

Bill 30 gets rid of the "probable" and "imminent" requirements and brings Alberta's refusal triggers (in what is now Section 31(1)) of the OHS Act into line with the rest of Canada. Work refusals are now allowed if a worker believes "on reasonable grounds" that:

- There's a dangerous condition at the worksite; or
- The work endangers the worker's own, or another person's health and safety.

Here's a look at the equivalent work refusal trigger rules in all 14 jurisdictions:

REFUSAL TRIGGERS ACROSS CANADA

Jurisdiction	Workers May Refuse Work	Exceptions/Restrictions
Federal [Canada Labour Code, Sec. 128]	Employee may refuse work if he/she has reasonable cause to believe that: <ul style="list-style-type: none"> ■ Use or operation of machine or thing endangers himself/herself or another employee; ■ A workplace condition endangers him/her; or ■ Performing an activity endangers himself/herself or another employee 	Refusal not allowed if: <ul style="list-style-type: none"> ■ It puts another person's life, health or safety in direct jeopardy; or ■ The danger prompting refusal is a normal condition of employment
Alberta [OHS Act, Sec. 31(1)]	If worker believes on reasonable grounds that: <ul style="list-style-type: none"> ■ There's a dangerous condition at the work site; or ■ The work endangers his/her own, or a co-worker or other person's health and safety 	Refusal right subject to workers' duty to take reasonable care to protect health and safety of other persons at or in vicinity of work site under Sec. 5(a) of Act
British Columbia [OHS Regs., Sec. 3.12(1)]	A person must not carry out or cause to be carried out any work process or operate or cause to be operated any tool, appliance or equipment if he/she has reasonable cause to believe that doing so would create an undue hazard to the health and safety of any person	
Manitoba [WSH Act, Sec. 43(1)]	Worker may refuse to work that he/she believes on reasonable grounds is a danger to his/her own or another worker or person's safety or health	
New Brunswick [OHS Act, Sec. 19]	Employee may refuse to do any act that he/she has reasonable grounds for believing is likely to endanger his/her own or any other employee's health or safety	

Jurisdiction	Workers May Refuse Work	Exceptions/Restrictions
Newfoundland & Labrador [OHS Act, Sec. 45(1)]	Worker may refuse to do work that he/she has reasonable grounds to believe is dangerous to his/her own or another person at the workplace's health and safety	
Nova Scotia, [OHS Act, Secs. 43(1) and (9)]	Employee may refuse to do any act that he/she has reasonable grounds for believing is likely to endanger his/her own or any other person's health or safety	Employee may not refuse to work or use or operate a machine if: <ul style="list-style-type: none"> ■ The refusal puts the life, health or safety of another person directly in danger; or ■ The danger prompting the refusal is inherent to the employee's work
Ontario, [OHS Act, Secs. 43(1)-(3)]	Worker may refuse to work if he/she has reason to believe that: <ul style="list-style-type: none"> ■ Any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself/herself or another worker; ■ The physical condition of the workplace is likely to endanger himself/herself; ■ Workplace violence is likely to endanger himself/herself; or ■ Any equipment, machine, device or thing the worker is to use or operate or the physical condition of the workplace violates the OHS Act or regulations so as to endanger himself/herself or another worker 	No refusal allowed if: <ul style="list-style-type: none"> ■ It would directly endanger another person's life, health or safety; ■ The danger prompting refusal is inherent in work or a normal condition of worker's employment; ■ The worker is a police officer, firefighter, correctional officer; or ■ The worker is employed in operating a/an hospital, sanatorium, long-term care home, psychiatric institution, mental health centre, rehab facility, residential group home or facility for persons with behavioural or emotional problems or disabilities, ambulance service, first aid clinic or station, laboratory operated by the Crown, or laundry, food service, power plant or technical service or facility used in conjunction with an institution, facility or service
Prince Edward Island [OHS Act, Sec. 28(1)]	Worker may refuse to do an act he/she has reasonable grounds for believing is likely to endanger his/her own or another worker's occupational health or safety	
Québec [OHS Act, Secs. 12 and 13]	Worker may refuse to perform work he/she has reasonable grounds to believe would expose his/her own or another person's health, safety or physical well-being to danger	Refusal not allowed if: <ul style="list-style-type: none"> ■ It puts the life, health, safety or physical well-being of another person in immediate danger; or ■ The conditions under which the work is to be performed are ordinary conditions in his/her kind of work
Saskatchewan [Sask. Employment Act, Sec. 3-31]	Worker may refuse to perform any act(s) he/she has reasonable grounds to believe is/are unusually dangerous to his/her own or any other person's health or safety	
Northwest Territories & Nunavut [Safety Act, Sec. 13(2)]	Worker may refuse to do any work if he/she has reason to believe that: <ul style="list-style-type: none"> ■ There's an unusual danger to his/her health or safety; ■ Carrying out the work is likely to create an unusual danger to his/her own or another person's health or safety; or ■ The operation of any tool, appliance, machine, device or thing is likely to create an unusual danger to his/her own or another person's health or safety 	Section 13. (1) defines "unusual danger" as: <ul style="list-style-type: none"> ■ A danger that does not normally exist in that work; or ■ A danger under which a person engaged in that work would not normally carry out his/her work
Yukon [OHS Act, Secs. 15(1) and (5)]	Worker may refuse work if he/she has reason to believe that: <ul style="list-style-type: none"> ■ The use or operation of a machine, device or thing constitutes an undue hazard to himself/herself or any other person; or ■ A condition in the workplace constitutes an undue hazard 	Refusal not allowed if: <ul style="list-style-type: none"> ■ It puts the life, health, safety or physical well-being of another person in immediate danger; or ■ The conditions under which the work is to be performed are ordinary conditions in that kind of work

...continued from page 1

- JHSC meeting attendance records;
- JHSC written recommendations;
- Records of response to JHSC recommendations, including corrective action reports;
- JHSC workplace inspection reports;
- JHSC incident investigation (including near misses);
- Records created by JHSC members involved in work refusals;
- JHSC member training and certification records; and
- Previous JHSC evaluations.

Note: In Québec, the JHSC must keep records tracking its own activities for the year and submit them to CNESST by March 31 of the subsequent year.

E. How to Audit The audit must be in writing and cover each of the JHSCs in the workplace.

F. What to Audit There are 2 broad themes around which to organize your audit:

- Compliance with the JHSC requirements of your jurisdiction's OHS laws; and
- The JHSC's overall effectiveness and actual impact on workplace health and safety.

Compliance: The 12 specific things BC requires employers to cover in the audit speak largely to the compliance theme, including whether:

- The JHSC has the proper number and types of members;
- The worker JHSC members were properly selected;
- The employer JHSC members were properly selected;
- The JHSC performed each of its required functions and responsibilities;
- The JHSC met regularly as required;
- The employer properly responded to JHSC recommendations;



- Each JHSC member got the time off required by law;
- The JHSC got the equipment, space, clerical information and information it was entitled to receive from the employer;
- The JHSC properly prepared and distributed its meetings reports;
- The employer met its duties with regard to posting and keeping JHSC information; and
- Each JHSC member received all of the instruction and training required.

Overall Effectiveness: While it's important to verify compliance, doing everything the law requires doesn't necessarily mean that your JHSC is effective. So, the audit should also focus on whether the JHSC is making a real and positive difference. BC Regs. say this but don't specify how—although WorkSafeBC guidelines flesh out some of the details. Based on guidance from BC and Nova Scotia and examples of private sector companies that actually do JHSC audits, questions to ask in assessing JHSC effectiveness include:

- Do members understand and capable of articulating the JHSC's role and extent of its authority?
- Do workers know the JHSC exists and what it does?
- Do workers know who the JHSC's members are and what they do?
- Do workers direct health and safety suggestions or complaints to the JHSC?
- Do supervisors consider the JHSC a threat or an ally?
- Do supervisors work with or around the JHSC?
- Do JHSC members reach out to workers, supervisors and management?
- Does the JHSC act fast to deal with matters brought to its attention?
- Are the JHSC's recommendations specific and realistic?

G. What Comes Next In BC it's mandatory and outside BC it's advisable to:

- Distribute a copy of the written audit report to both the employer and JHSC;
- Ensure the JHSC discusses the audit evaluation at its next meeting and records the discussions in the meeting minutes.

FOR MORE HELP ASSESSING JHSC EFFECTIVENESS

Click here for a JHSC Effectiveness Checklist that you can adapt for your own annual JHSC effectiveness assessment audit

Click here for a Model JHSC Self-Assessment Questionnaire to use as the basis of your audit

When It's Mandatory to Establish a Workplace JHSC/HSR

Newly effective Bill 30 in Alberta revises previous rules on when employers/prime contractors must establish a joint health safety committee (JHSC) or health and safety representative (HSR) at their worksite. Here are the up-to-date JHSC/HSR requirements for all jurisdictions:

WHEN IT'S MANDATORY FOR EMPLOYER TO ESTABLISH A JHSC/HEALTH & SAFETY REPRESENTATIVE AT THE WORKSITE:

Jurisdiction	JHSC Required	HSR Required
Federal	At each workplace employer controls with 20 or more normally employed employees (unless workplace is a ship or Ministry grants an exemption) [Can Labour Code, Sec. 135(1)]	At each workplace employer controls with fewer than 20 normally employed employees (unless workplace is a ship or Ministry grants an exemption) [Can Labour Code, Sec. 136(1)]
Alberta	At each employer workplace with 20 or more workers where work expected to last at least 90 days unless Director grants exemption (a) [OHS Act, Section 16(1)]	At each employer workplace with 5 to 19 workers where work expected to last at least 90 days unless Director grants exemption (a) [OHS Act, Section 17(1)]
British Columbia	At each employer workplace where 20 or more of its workers are regularly employed or if JHSC ordered by WorkSafeBC [Workers' Comp Act, Sec. 125]	At each employer workplace where 9 to 19 of its workers are regularly employed or if HSR ordered by WorkSafeBC [Workers' Comp Act, Sec. 139]
Manitoba	At each employer workplace where 20 or more of its workers are involved in work expected to last at least 90 days or if JHSC ordered by Board (b) [Workers' Health & Safety Act, Sec. 40(1)]	At each employer workplace where 5 to 19 of its workers are involved in work expected to last at least 90 days or if HSR ordered by Board (b) [Workers' Health & Safety Act, Sec. 41(1)]
New Brunswick	At each employer workplace with 20 or more regularly employed employees (c) [OHS Act, Section 14(1)]	At each employer workplace with 5 to 19 regularly employed employees (c) [OHS Act, Section 17(1)]
Newfoundland & Labrador	At each employer workplace with 10 or more employed workers [OHS Act, Section 37]	At each employer workplace with 9 or fewer employed workers [OHS Act, Section 41]
Nova Scotia	At each employer workplace with 20 or more regularly employed persons (d) [OHS Act, Section 29(1)]	At each employer workplace with 5 to 19 regularly employed persons (d) [OHS Act, Section 33(1)]
Ontario	At each employer workplace with 20 or more regularly employed workers or less than 20 if the workplace is subject to the Designated Substance Reg. or the MOL orders a JHSC (e) [OHS Act, Section 9(2)]	At each employer workplace with 5 to 19 regularly employed workers or the MOL orders an HSR (e) [OHS Act, Section 8(1)]
PEI	At each employer workplace with 20 or more regularly employed persons or the Director orders a JHSC (f) [OHS Act, Section 25]	At each employer workplace with 5 to 19 regularly employed persons or the Director orders an HSR (f) [OHS Act, Section 26(1)]
Québec	In any establishment employing more than 20 workers and listed as a site requiring a JHSC in the OHS regulations [OHS Act, Section 68]	In any establishment with a JHSC there must be at least one safety representative acting ex officio, i.e., independent of the JHSC [OHS Act, Section 68]
Saskatchewan	At every place of employment where 10 or more workers of one employer work or where Director orders JHSC to be established (g) [Sask. Employment Act, Section 3-22(1)]	At every place of employment where fewer than 10 workers of one employer work [Sask. Employment Act, Section 3-24(1)]
Northwest Territories	At each employer workplace where 20 or more workers work or are likely to work more than 90 days or where govt. orders JHSC [OHS Regs., Section 37]	At each employer workplace where fewer than 20 workers work & no JHSC exists [OHS Regs., Section 39]
Nunavut	At each employer workplace where 20 or more workers work or are likely to work more than 90 days or where govt. orders JHSC [OHS Regs., Section 37]	At each employer workplace where fewer than 20 workers work & no JHSC exists [OHS Regs., Section 39]
Yukon	At each employer workplace where 20 or more workers are regularly employed for more than one month unless govt. grants exemption [OHS Act, Section 12(20)]	At each employer workplace where a JHSC isn't required depending on number of workers and workplace's hazard classification: <ul style="list-style-type: none"> ▪ 5 or more workers at workplace classified as an "A" hazard ▪ 10 or more workers at workplace classified as a "B" hazard ▪ 15 or more workers at workplace classified as a "C" hazard [OHS Act, Section 13(1)]

NOTES (a) In Alberta, if there are 20+ workers from 2 employers or employers and self-employed persons, the JHSC must be established by the prime contractor or, if there is no prime contractor, jointly among the employers or employers/self-employed persons (b) In Manitoba, the duty to establish the JHSC/HSR falls on the prime contractor if the workplace is a construction site (c) In New Brunswick, the duty to establish JHSC/HSR at a "project site," i.e., construction project, falls on the contractor in charge of the project site with requirements varying depending on whether the project site is large or medium-sized (d) In Nova Scotia, the duty to establish JHSC/HSR at a construction project falls on the constructor (e) In Ontario, the duty to establish JHSC/HSR at a project falls on the constructor (f) In PEI, the duty to establish JHSC/HSR at a project falls on the constructor (g) In Sask, constructors have the duty to establish JHSC/HSR at a construction site where workers are expected to work more than 90 days

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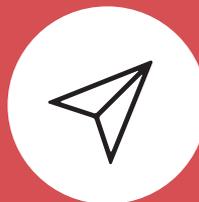
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