



2021 Due Diligence Guide

OHS INSIDER

7/1/21

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ACCESSIBILITY

Feb 13: The government proposed [new Accessible Canada Act regulations](#) requiring federally regulated employers to implement workplace accessibility plans, establish feedback and review mechanisms and submit progress reports or face administrative monetary penalties for noncompliance. Deadline to comment: April 19.

Aug 31: That's the deadline to complete the [online survey](#) on the Disability Inclusion Action Plan for making federally regulated workplaces and other aspects of public life more accessible to persons with disabilities.

AIR TRAVEL

Nov 19: Effective today, the Canadian government rather than the airlines will screen air travelers to determine if they're on the *Secure Air Travel Act* (SATA) list, aka "no-fly list," using a centralized system. Travelers can also get their own Canadian Travel Number that they can use when booking flights to

show they're not on the SATA list. In addition to greater speed, efficiency and privacy protections, the new system will screen in advance to eliminate the risk of bias which can occur when passengers are screened in person when they show up for their flights.

AVIATION SAFETY

Dec 12: [New Canadian Aviation Regulations](#) took effect designed to reduce the risk of flight crew fatigue, including revised flight and duty limits to ensure crew members get ample rest between flights and aren't on the job for too long. The regulations also provide for flexibility by allowing operators to vary from the prescribed limits if they can show that it won't affect alertness and safety.

BORDER RESTRICTIONS

Nov 21: Effective today, air travelers flying to Canada as their final destination must submit their COVID travel and contact information electronically via the [ArriveCAN app](#) and show their receipt when they arrive or they'll be subject to fines of

up to \$1,000. All travelers entering Canada by air, land or sea must submit info through the app or by calling 1-833-641-0343 during their quarantine to confirm they've arrived at the quarantine place and complete a daily self-symptom check. Exemptions do apply.

Nov 27: The federal government announced that it's extending COVID travel restrictions through at least January 21.

Jan 7: New rules took effect requiring all passengers age 5 or older who are travelling to Canada by air from another country to show they tested negative for COVID to get into the country. Not just any testing will do. Passengers must get a negative molecular RT PCR test, the most accurate but also the slowest and most complex type of COVID test. And they must show the test was done within 72 hours of their boarding the flight. As before, travelers must use ArriveCAN and provide accurate contact information and a 14-day quarantine plan.

Feb 15: Travelers to Canada must furnish proof that they tested negative for COVID in the U.S. within 72 hours of pre-arrival. As of February 22, travelers will have to take a COVID molecular test upon arrival as well as at the end of their mandatory 14-day quarantine. Effective February 18, air travelers must also reserve a 3-night stay in a government-authorized hotel before their departure. As before, all travelers must provide travel and contact information electronically,

including a suitable quarantine plan, via ArriveCAN before crossing the border or boarding a flight.

Mar 1: People coming into Canada are no longer eligible for COVID relief benefits during the time they're in mandatory quarantine or isolation. **Exception:** The new bar on benefits, which is retroactive to October 1, 2020, doesn't apply to health care workers, truck drivers and others exempt from isolation requirement nor to those traveling for medical emergencies.

CERS

Nov 19: Royal Assent for [Bill C-9](#) creating a new Canada Emergency Rent Subsidy for businesses, non-profits and charities hit by COVID. The CERS provides tenants up to 65% in commercial rent and mortgage interest payments relief for costs through December 19, 2020. Claims can be made retroactively for the period of September 27 to October 24, 2020 and the program will stay in effect through June 2021. Coupled with the 25% top-up available under the new Lockdown Support, that amounts to up to 90% in available rental and mortgage relief.

CLIMATE CHANGE

Nov 19: Newly tabled legislation requires the federal government to achieve net-zero emissions by 2050 via the use of rolling 5-year emissions reduction targets with the input of a new agency called the Net-Zero Advisory Body. The government would also have to

publish annual reports of its progress in achieving the targets.

Jun 4: The new federal Agricultural Clean Technology Program will provide funding to farmers and agri-businesses that want to develop clean technologies to cut greenhouse gas emissions. The Program includes 2 streams, one supporting research and development and the other adoption of clean technologies.

CONTACT TRACING

Feb 9: The government plans to evaluate and fine-tune the COVID Alert app now being used by millions across the country. The new efforts will focus on collecting data on total users, exposures notifications sent and other key metrics to improve performance and further tighten personal privacy protections

COVID-19 ENFORCEMENT

Feb 15: The Canadian government is cracking down even harder on travelers by tripling the fines for violating COVID travel restrictions, including \$3,000 for disobeying a screening or quarantine officer's order and \$825 for failing to:

- Present to a screening officer
- Disclose recent close contact or the possibility of having COVID to an officer
- Obey an officer's order to report to a public health authority.

May 6: Transport Canada announced fines against 2 international airline passengers for

violating COVID air travel restrictions, the sixth such fine issued since the pandemic began. The list (in reverse chronological order):

- \$2,500 for presenting an altered COVID test result before boarding
- \$6,500 for making a false declaration about their health status
- \$10,000 for presenting a false or misleading COVID test upon arrival
- \$7,000 for making a false declaration about their health status upon arrival
- \$1,000 for not providing evidence of negative molecular test within 72 hours of departure
- \$2,500 for disobeying a mandatory quarantine order upon arrival.

COVID-19 RESPONSE

Jun 1: The MOL, Canadian Labour Congress and other labour groups issued a joint statement calling on employers to “accommodate” workers who want to get a COVID vaccine or are experiencing post-vaccination symptoms without requiring them to use their Canada Labour Code personal or medical leave. The statement also urges unions to work together with employers to establish appropriate accommodations and encourage all workers to get vaccinated.

COVID-19 RELIEF

Mar 4: The federal government announced that rent supports for

businesses strapped by COVID will stay the same from March 14 to June 5, 2021. Thus, the maximum rent subsidy rate will remain at 65% and the Lockdown Support rate for the hardest hit businesses will remain at 25% for up to 90% of total rent.

DOMESTIC VIOLENCE

May 4: Second Reading for [Bill S-231](#), which would revise the *Criminal Code* to impose new restrictions on issuance of court orders releasing individuals charged with intimate partner violence when there are “reasonable fears” of domestic violence.

DRUGS AND ALCOHOL

Jan 22: The Canadian Nuclear Safety Commission updated its [regulations](#) on alcohol and drug testing of employees at nuclear power plants and other high-security nuclear sites. The punchline is that random testing of safety-sensitive employees is now allowed. Testing on safety-sensitive employees and job applicants is also allowed:

- Before an applicant is hired
- After an incident occurs
- When a supervisor has reasonable grounds to believe that testing is necessary
- For follow-up monitoring after confirmation of a substance use disorder.

ENVIRONMENTAL ASSESSMENT

Dec 14: One year to the date after the new federal environmental assessment regime and tax took

effect, the MOE established an Advisory Council to advise the government on the effectiveness of the new environmental impact assessment rules.

FISHING INDUSTRY

May 4: The federal government announced its support for a proposal that would allow Pacific prawn fisheries and harvesters to engage in a practice known as “tubbing,” that is, keeping their catch frozen in tubs that are available for sale as well as inspection by officials enforcing commercial prawn fishery size limits.

HARASSMENT AND VIOLENCE

Feb 2: The government issued [new guidelines](#) to help federally regulated employers [comply with the new Bill C-65 workplace harassment and violence regulations that](#) took effect on January 1, 2021.

HAZARDOUS PRODUCTS

Apr 19: Public comments closed on [proposed changes](#) to Schedule 2 of the federal *Hazardous Products Regulations* in accordance with GHS, Seventh Revised Edition.

Highlights:

- Split Category 1 flammable gases into subcategories 1A to include pyrophoric gases and 1B to include flammable gases that are neither pyrophoric nor chemically unstable
- Create new Category 3 (called “Aerosols”) to include non-flammable aerosols

- Specify that products classified in the hazard class of aerosols don't need to be classified in the gases under pressure hazard class.

HUMAN RIGHTS

Jun 23: Newly tabled and controversial legislation, [Bill C-36](#), would make online “hate speech,” defined as content of a communication expressing detestation or vilification of an individual or group on the basis of race, religion, sex, etc., a form of discrimination banned by the *Canadian Human Rights Act*.

IMMIGRATION

Nov 2: The Mandatory Isolation Support for Temporary Foreign Workers Program has been extended until November 30. The Program provides up to \$1,500 per temporary foreign worker to employers required to isolate the worker for 14 days under the *Quarantine Act*.

Apr 14: The federal government created a new pathway providing permanent residence for 50,000 foreign workers who are already in Canada and have at least 1 year of experience working in health care or another essential occupation. The program also includes a separate stream for 40,000 international students who've completed an eligible Canadian post-secondary program within the last 4 years, and no earlier than January 2017.

LOCKDOWN SUPPORT

Nov 19: The Lockdown Support contained in newly passed [Bill C-9](#) provides up to 25% in commercial rent and mortgage relief to businesses and other tenants forced to shutter or partially shutter due to a COVID lockdown order. Tenants can also qualify for the new 65% Canada Emergency Rent Subsidy, making 90% of total relief on rent and mortgage available.

MENTAL STRESS

Dec 17: The MOL completed the first round of public consultations on its [proposal](#) to add new OHS rules requiring federally regulated employers to take preventive measures to ensure workers' psychological health and safety. The agency plans to issue a “What We Heard” report and propose regulatory changes as early as March 2021.

Jan 8: Comments closed on the MOL's [proposal](#) to add new OHS rules requiring federally regulated employers to take preventive measures to ensure workers' psychological health and safety. The agency plans to issue a “What We Heard” report and propose regulatory changes as early as March 2021.

OHS ENFORCEMENT

Jan 13: The government published regulatory [guidance](#) for employers about the new [federal administrative monetary penalties](#) for OHS violations that took effect on January 1.

OHS HARMONIZATION

Mar 1: Federal, provincial and territorial labour ministers held a virtual meeting to discuss continuing the process of harmonizing OHS regulations. Now that most jurisdictions have adopted harmonized first aid and PPE rules, the ministers will likely sign an agreement on a second round of changes some time in the summer or fall. If and when it comes, expect that second round to include a universal noise exposure limit of 85 dBA.

PLASTIC WASTE

Feb 3: Second Reading [Bill C-204](#), which would ban the export of Acrylonitrile, Ethylene, Styrene and 28 other types of plastic waste to foreign countries for final disposal. The legislation is part of the government's larger strategy to ban single-use plastic products like straws, checkout bags, six-pack rings and cutlery.

PPE

Jun 17: The federal government is providing private health care PPE manufacturer Medicom Group up to \$29 million to build a new factory in Montreal dedicated to producing the specialized fabric needed to produce respirators and surgical masks. In addition to creating jobs, the measure is designed to ensure that there'll be ample PPE available for the next pandemic.

PRIVACY

Nov 17: Newly tabled [Bill C-11](#), the *Digital Charter Implementation Act*, imposes strict new privacy requirements on businesses' handling of personal information, including information pertaining to employees of companies that are federally regulated. Highlights:

- New "plain language" requirements to ensure consent is meaningful
- New rights of individuals to have their personal information transferred from one organization to another, withdraw consent and have their personal information disposed of
- New transparency and de-identification requirements for businesses
- Administrative monetary penalties of up to 3% of an organization's global revenues or \$10 million
- Penalties of up to 5% of global revenues or \$25 million for serious violations.

Nov 24: Second Reading for [Bill C-11](#), the *Digital Charter Implementation Act*, which imposes strict new privacy requirements on businesses' handling of personal information, including information pertaining to employees of companies that are federally regulated. Highlights:

- New "plain language" requirements to ensure consent is meaningful
- New rights of individuals to have their personal information transferred from

- one organization to another, withdraw consent and have their personal information disposed of
- New transparency and de-identification requirements for businesses
 - Administrative monetary penalties of up to 3% of an organization's global revenues or \$10 million
 - Penalties of up to 5% of global revenues or \$25 million for serious violations.

RADIATION SAFETY

Nov 25: The Canadian Nuclear Safety Commission issued regulations requiring licensees of nuclear plants to take new measures to protect workers from radiation hazards, including:

- Make reasonable accommodations for nuclear energy workers who self-disclose that they're breastfeeding
- Retain dose records for 5 years
- Appropriately select, use and maintain radiation detection and measurement instrumentation
- Inform all nuclear energy workers of their duties and responsibilities during an emergency and the risks associated with radiation while controlling an emergency.

RAILWAY SAFETY

Nov 6: The federal government imposed new railway safety rules to

prevent the risk of derailments in winter. Rather than basing speed restrictions on a range of winter dates, the new rules require railway companies to develop and get government approval for a Winter Operations Plan for each subdivision in which its higher risk key trains operate setting out track inspection and maintenance procedures and the capacity to impose further speed restrictions where inspection results or temperature conditions dictate.

Nov 25: New federal regulations impose stricter railway crew and operator work and rest limits and require railway companies to implement Fatigue Management Plans within 12 months, with Fitness for Duty requirements to take effect 12 months after initial Plan implementation.

Mar 10: Transport Canada issued a pair of new Ministerial Orders to boost railway safety and prevent runaway train incidents:

- [MOL 21-01](#) requires railway companies to implement procedures that locomotive engineers must use to prevent uncontrolled movement of railway equipment due to an accidental release of the train's air brakes
- [MOL 21-02](#) provides for stronger performance standards for locomotives equipped with roll-away protection, which is a feature designed to apply the air brakes when movement is detected.

Jun 1: New federal safety inspection and maintenance rules require railway companies to:

- Implement a safety certification process for workers who inspect and supervise restoration of tracks
- Establish a process to ensure that track maintenance and repair work meets regulatory requirements and the railway companies' own standards
- Implement comprehensive plans approved by a professional for managing rail wear and the condition of rail surfaces.

fatigue with electronic logging devices ([ELDs](#)) certified by a third party with Transport Canada

Jun 23: In recent years, railway crossing accidents have increased roughly 61% in the winter months and the Transportation Safety Board of Canada is launching a new investigation to figure out why. Based on experience from previous investigations, the report should come out in about 2 years.

TRAFFIC SAFETY

Apr 24: Newly [proposed federal regulations](#) would establish new safety standards requiring hybrid and electric light vehicles to emit minimum levels of sound (equivalent to what conventional vehicles generate) when traveling at low speed that can be heard by pedestrians, pedal cyclists and the visually impaired.

Jun 12: Effective today, motor carriers and drivers of commercial buses and trucks must switch the daily paper logs they use to track driving hours and guard against

TRANSPORTATION SAFETY

Jun 29: The Transportation Safety Board published its 2020 annual statistics summaries on transportation “occurrences” in the [air](#), [rail](#), [marine](#) and [pipeline](#) sectors.

TRAVEL RESTRICTIONS

Jan 11: Canadians who travel outside the country in disregard of COVID public health orders will no longer be eligible for the Canada Recovery Benefit (CRB), Canada Recovery Caregiving Benefit (CRCB) and Canada Recovery Sickness Benefit (CRSB) for the time they spend in mandatory quarantine. The new rules, which are retroactive to January 3, 2021, don't apply to health care workers who must cross the border to do their jobs and others who are exempt from *Quarantine Act* requirements.

Jul 5: Effective today, travelers to Canada who can prove they're fully vaccinated may apply for exemption from quarantine, hotel stopover and day-8 testing rules via electronic submission to ArriveCAN. In addition to proving vaccination status, travelers must be asymptomatic and have a suitable quarantine plan in case a border agent at the point of entry finds them ineligible for an exemption.

CASES

SMOKING POT AT WORK TWICE IS JUST CAUSE TO FIRE RAILWAY WORKER

A railway worker was fired after being caught smoking pot at work twice. The worker didn't deny consuming cannabis in the workplace or claim that he had an addiction. He relied on his clean disciplinary record, sincere remorse and the family problems that caused him to smoke pot. He also claimed that his supervisors knew about and tacitly condoned his workplace cannabis use. But the federal arbitrator didn't buy it and upheld termination, citing the fact that he got caught on 2 different occasions and that his safety-sensitive railway job required him to be alert and focused at all times [[International Union of United Metallurgy, Paper and Forestry, Rubber, Energy Manufacturing, Services and Allied Industries \(Local 9344\) c Compagnie de chemin de fer du littoral Nord de Québec and du Labrador inc. \(IOC Mining Company - Rio Tinto\)](#), 2020 CanLII 83837 (CA SA), November 3, 2020].

OK TO DISCIPLINE WORKER FOR DISOBEYING NO-JEWELRY SAFETY POLICY

CP set off a firestorm by suspending a 30-year postal worker for 5 shifts because she refused to remove her

engagement ring as required by the workplace safety policy. The union filed 2 grievances, both of which the federal arbitrator board rejected. The union's first claim that forcing the worker to remove a ring after it was blessed by a priest at her wedding was religious discrimination was a bit of a long shot. But the main claim about the suspensions being unfair and unreasonable was a closer call. After hearing from 4 witnesses, the arbitrator sided with CP finding that a ban on wearing rings and other jewelry that could get entangled in the machinery was a reasonable and necessary safety policy and that it was consistently enforced [[Canada Post Corporation v Canadian Union of Postal Workers](#), 2020 CanLII 86105 (CA LA), November 2, 2020].

EMPLOYER MUST APPOINT OUTSIDER TO INVESTIGATE WORKERS HARASSMENT COMPLAINT

Before Bill C-65, federal OHS regulations required employers to appoint "competent" persons to investigate workplace harassment complaints and define competency" as being **and being seen** by the workplace parties as being impartial. A railway worker who complained about being sexually harassed by a co-worker tested the limits of that rule by rejecting all 13 of the railway officials her employer proposed to

investigate the complaint. The employer claimed the worker was abusing her rights, but a government safety officer disagreed and ordered it to appoint an investigator from outside the railway. The federal OHS tribunal upheld the order and rejected the appeal. There was no history of bad blood between the worker and management nor any evidence to suggest that the worker was deliberately stirring up trouble. But the 13 proposed candidates were a “pretty homogenous group,” whom in addition to working for the railway, all happened to be male and the worker was entitled to her “subjective belief” that none of them would be impartial [[Canadian National Railway Company v. United Steelworkers](#), 2020 OHSTC 6 (CanLII), September 21, 2020].

Editor’s Note: The scenario involved in this case won’t be possible now that the Bill C-65 rules, including the new requirements for designating persons to investigate workplace harassment and violence complaints, have taken effect.

COURT REFUSES TO SET ASIDE EXCLUSION ORDER AGAINST CHINESE NATIONAL

The Minister of Public Safety ordered a Chinese national to leave Canada found to be in the country illegally. The national contended the order violated his Charter rights and asked the federal court to “stay,” that is, freeze its enforcement pending the resolution of the case. But the court declined finding that making the national leave the country wouldn’t cause him “irreparable harm.” Interfering with his ability to manage

his Canadian business wasn’t enough to meet the irreparable harm standard; nor was there any evidence to suggest he’d be at greater risk of COVID infection in China [[Li v. Canada \(Public Safety and Emergency Preparedness\)](#), 2020 CanLII 103469 (FC), December 31, 2020].

OK TO FIRE ELECTRICAL WORKER FOR FALSIFYING SAFETY INSPECTION REPORT

The final straw that cost an electrical maintenance worker with a history of safety violations was violating his Last Chance agreement was falsely certifying that a Grade Crossing Intersection was safe. Later, he acknowledged omitting something significant from his inspection report, namely, that some of the bonds were broken. When his boss confronted him for not repairing them, the worker basically shrugged his shoulders and blamed it on the lack of tools. The federal arbitrator upheld the employer’s decision to fire him. Not having the right tools is no excuse for falsifying a safety inspection report, especially given the worker’s history, it concluded [[Canadian Pacific Railway Company v IBEW \(System Council No. 11\)](#), 2021 CanLII 7263 (CA LA), February 3, 2021].

OFF-DUTY ASSAULT OF CO-WORKER IS JUST CAUSE TO TERMINATE

An airline pilot was fired after being charged with assaulting a co-worker and former lover at home. *Millhaven*

Fibres, the seminal case on the issue, lists the 5 factors that determine whether employees can be fired for off-duty conduct. The employer was able to prove 4 of these—the pilot’s conduct rendered him unable to do his job effectively, made co-workers reluctant to work with him, was a serious criminal violation and made it harder for the employer to manage its business. The only factor missing was proof of actual damage to the airline’s reputation. But the federal arbitrator found just cause to dismiss, citing other courts ruling that the mere potential to do reputational damage is enough. Besides, there’s no rule that says an employer must prove all 5 of the Millhaven factors [[Sunwing Airlines Inc. v Unifor And Its Local 7378](#), 2021 CanLII 13232 (CA LA), February 22, 2021].

EMPLOYER FINED \$175,000 FOR WORKER’S CONFINED SPACE ASPHYXIATION DEATH

Two cleaning workers entered a tank trailer used to transport fresh produce but only one came out alive. The survivor can thank the co-worker who noticed that the workers had passed out and immediately alerted First Responders. Sadly, the worker who didn’t survive died from asphyxiation caused by the residual nitrogen the tank contained to keep the produce fresh. The employer was fined \$175,000 after pleading guilty to failing to ensure that workers followed safe entry procedures for confined space work [[1040135 Ontario Inc., dba Toronto Tank Lines](#), [Govt. Announcement](#), April 13, 2021].

POSITIVE MARIJUANA TEST DOESN’T PROVE WORKER WAS IMPAIRED AT TIME OF ACCIDENT

A machine operator subjected to post-incident testing after backing his Cat Loader into a pole, tested positive for THC, the ingredient in marijuana that causes impairment. As a result, he got fired. But the federal arbitrator reinstated him without loss of pay and \$5,000 in damages to boot. For one thing, the company didn’t give the union all of the necessary evidence before doing the test. Just as importantly, the THC levels weren’t enough for the company to prove that the operator was impaired **at the time of testing**. The arbitrator pooh-pooed the company’s contention that the nature of the incident was all the evidence necessary to show impairment as a “flimsy” argument [[Canadian National Railway Company v United Steelworkers](#), Local 2004, 2021 CanLII 30111 (CA LA), April 15, 2021].

DOES LEGALIZED MARIJUANA PROVIDE MORE LEEWAY FOR RANDOM DRUG TESTING?

The union contended that unannounced random urine drug testing of safety-sensitive public airport workers, in this case a firefighter, was an undue invasion of privacy. While acknowledging that case law has weighed heavily against random drug testing in the past, the airport noted that those cases were decided before marijuana legalization. The situation has changed dramatically since then, the airport argued. In a potentially

significant ruling that may signal relaxation of restrictions on random drug testing in response to legalization, the federal arbitrator agreed and upheld the policy as an essential safety measure and deterrent even though its urine and saliva testing methods were highly intrusive [[Ottawa Macdonald-Cartier International Airport Authority v Ottawa Airport Professional Aviation Fire Fighters Association](#), 2021 CanLII 44861 (CA LA), May 18, 2021].

TRUCKING FIRM FINED \$120,000 FOR UNLOADING OPERATION FATALITY

A worker unloading masonry slabs of countertop material weighing several hundred pounds each from a flatbed truck lost his balance and fell to the ground. The slabs fell on top of him; later, he was pronounced dead at the scene. The employer pled guilty to 2 OHS violations, lack of a proper safety plan (\$40,000 fine) for handling the slabs and not providing adequate training (\$80,000 fine) [[Road Runner Prime Logistics, Govt. Press Release](#), April 15, 2021].

CSJ DIDN'T GIVE EMPLOYER CHANCE TO ANSWER LACK OF HARASSMENT POLICY EXCLUSION

Starting in 2019, employers had to specify what they do to ensure a nondiscriminatory and harassment-free workplace to qualify for the Canada Summer Jobs (CSJ) program. A faith-based university excluded from participation on the

basis of the new criterion claimed the decision was procedurally unfair and in violation of its Charter rights. The federal court agreed with the first contention, noting that the CSJ officer didn't provide the university a chance to provide "relevant evidence to the decision maker" about its compliance with the requirement. And since that settled the case, the court had no need to address the weightier Charter question [[Redeemer University College v. Canada \(Employment, Workforce Development and Labour\)](#), 2021 FC 686 (CanLII), June 29, 2021].

ALBERTA

LAWS & ANNOUNCEMENTS

COR

Jan 1: The Alberta WCB made some temporary changes in response to the pandemic to make it easier for employers to maintain their Certificate of Recognition status in 2021, including elimination of the requirement for on-site interviews and observations and the authorization to conduct remote interviews via web-based platforms, phone and/or questionnaires.

COVID-19 CLOSURES

Dec 13: With COVID cases spiking, employers of non-essential Alberta businesses and services must implement mandatory work from home measures unless they determine that work requires a physical presence for operational effectiveness.

COVID-19 ENFORCEMENT

Mar 5: Alberta OHS officers can now issue tickets of up to \$1,000 for violations of workplace mask requirements. Face masks remain mandatory in all indoor workplaces and facilities outside the home, except when working alone in an office or in a safely distanced cubicle or other space with a barrier in place.

COVID-19 LIABILITY

Apr 22: Alberta tabled legislation that would ban negligence and other lawsuits for money damages against health care workers over the way they handled care issues during the pandemic. **Exception:** Immunity wouldn't apply to workers who committed gross negligence and failed to follow COVID-19 public health guidelines. BC, New Brunswick, Nova Scotia, Ontario and Saskatchewan have or are in the process of adopting similar immunity laws.

COVID-19 RELIEF

Mar 31: That's the deadline to [apply](#) for the Albert Small and Medium Enterprise Relaunch Grant program covering the costs of PPE, new health and safety measures and other costs related to restarting a business. The Grant, covers companies, which now also includes new businesses that began operating between March and October 2020, with fewer than 500 employees that have experienced revenue losses of at least 30% due to COVID closures or restrictions.

COVID-19 RESPONSE

Jan 18: With case rates stabilizing, Alberta loosened COVID restrictions by allowing outdoor social gatherings of up to 10 people and increasing permissible funeral attendance to 20 people. But the bans remain on indoor gatherings and funeral receptions.

Feb 8: With hospitalizations falling below the 600 benchmark, Alberta activated Step 1 of its plan to loosen COVID restrictions by expanding the scope of indoor fitness and children’s sport and performance activities permitted. Restaurants, pubs and cafés can remain open until 10 pm (11 pm for in-person dining) subject to a 6 person per table limit. All parties must also furnish contact information to allow for contact tracing.

Mar 8: A week after moving to Step 2 of its re-opening plan, Alberta continued to loosen COVID restrictions by increasing customer capacity limits from 15% to 25% of fire code capacity, not including staff and permitting hotels, conference centres and banquet halls to re-open (subject to Step 2 limitations). As before, restaurants, pubs and cafés may remain open until 10 pm (11 pm for in-person dining) subject to a 6 person per table limit. All parties must also furnish contact information to allow for contact tracing.

May 5: Alberta implemented strict new “last resort” public health measures to stop the spike of COVID cases, which are tiered based on local case rates. The

strictest requirements apply in regions where case rates exceed 50 per 100,000 people make non-essential work from home mandatory except where the employer requires workers’ physical presence to “operate effectively.” They also require non-essential workplaces that experience 3 or more transmission cases to shut down for at least 10 days.

Jun 1: With cases dropping and vaccinations rising, Alberta activated Stage 1 of its reopening plan.

Highlights of what’s now allowed:

- Outdoor gatherings up to 10 (indoor social gatherings remain banned)
- Outdoor patio dining up to 4 per table
- Retail up to 15% of fire code capacity
- Personal and wellness services, by appointment only.

Jul 1: Having passed the 70% vaccination threshold, Alberta moved to Stage 3 of its COVID response plan, by ending all remaining restrictions, including the ban on indoor social gatherings and indoor mask requirements. However, confirmed COVID cases still have to self-isolate and restrictions in continuing care settings remain in place.

COVID-19 SCREENING

Apr 26: Alberta made it easier for employers to provide rapid on-site COVID testing by eliminating the requirement of hiring a health care provider to run the program. As before, all tests will be provided free

at government expense, provided that they have a screening program outlining test protocols, use of PPE and processes for reporting results of individuals who test positive.

May 12: Alberta is offering free rapid antigen testing kits to all chambers of commerce across the province who will then distribute the kits to local employers for purposes of performing workplace screening. Although the province has been offering free kits for a while, funneling through local chambers of commerce should make it easier for employers to obtain and use them. The move comes after the government dropped the requirement that screening programs be run by a healthcare professional.

CRITICAL WORKER BENEFIT

Feb 17: [Applications begin for the new Critical Worker Benefit](#), a joint federal-Alberta program paying \$1,200 in cash to front-line workers in healthcare, social services, education and certain private sectors that provided critical services in COVID response. To qualify, workers must have put in at least 300 hours during the period from Oct. 12, 2020 to Jan. 31, 2021. The deadline for employers to apply on behalf of their workers is March 19, 2021.

Mar 19: That's the last day for employers to apply [for the new Critical Worker Benefit](#) on behalf of their workers. The Benefit is a joint federal-Alberta program paying \$1,200 in cash to front-line workers in healthcare, social services, education and certain private sectors

that provided critical services in COVID response. To qualify, workers must have put in at least 300 hours during the period from Oct. 12, 2020 to Jan. 31, 2021. The deadline for employers to apply on behalf of their workers is March 19, 2021.

FACE MASKS

Dec 13: Effective immediately and until further notice, face masks or coverings are required for workplaces in Alberta. The order covers not just employees but also visitors, delivery personnel and contractors.

FIRST AID

Jul 1: Alberta published the [revised list](#) of training agencies who are approved to provide workplace first aid training required by the OHS Code, as well as [updated guidelines](#) for first aid training agencies seeking such regulatory approval.

FIRST RESPONDERS

Nov 18: Second Reading for [Bill 47](#), which would provide a on-time, tax-free Heroes Fund payment via the Alberta WCB to the families of firefighters, police officers, paramedics, sheriffs and provincial corrections officers and other eligible first responders who lost their lives as a result of contracting COVID while carrying out their duties. Alberta is the first province to create such a program.

Dec 9: Royal Assent for [Bill 47](#), which provides a on-time, tax-free Heroes Fund payment via the

Alberta WCB to the families of firefighters, police officers, paramedics, sheriffs and provincial corrections officers and other eligible first responders who lost their lives as a result of contracting COVID while carrying out their duties. Alberta is the first province to create such a program.

INFECTION CONTROL

Jan 12: Alberta issued new government [guidance](#) to help employers and building owners control the risk of COVID infection in hallways, washrooms, lobbies and elevators and other common areas of the workplace.

INJURY REPORTING

Nov 1: The Alberta WCB issued revised versions of the following work injury reporting forms:

- [Employer Report of Injury Form C040](#) to be submitted within 72 hours of being advised of an injury
- [Employer Report of Injury Form C040](#) (with instructions) to complete injury report paperwork
- [Employer Progressive Injury Questionnaire Form C606](#).

Jan 31: The WCB published [new guidance](#) on reporting workplace COVID cases and exposure incidents under OHS injury reporting laws. Bottom line: Employers must report if a worker is either:

- Confirmed to have COVID and the employer has reason to believe that the exposure occurred at work; or

- Exposed to a confirmed or suspected COVID-19 case at a work site that didn't follow the COVID rules.

JOBS NOW

May 20: Employers seeking to hire the unemployed or underemployed can now [apply](#) for Alberta Jobs Now grants covering up to 25% of an employee's salary over a 52-week period up to a maximum of \$25,000 per employee for up to 20 employees. The grant amount will be 1.5 times higher for employers who hire persons with disabilities. New hires must reside and work in Alberta and not have worked for the employer within the last 90 days. The deadline to apply is August 31; however, a second round of applications will begin on Sept. 15 and end on Dec. 31.

LABOUR RELATIONS

Jan 1: If you have to file papers with the Alberta Labour Relations Board by a specific date, be aware that the agency is moving back its deadline for all filing methods, including email, from 4:30 PM to 4:00 PM.

MATERIALS HANDLING

Jul 1: New [regulatory guidance](#) explains the Section 95(a) OHS Code requirement that an overhead crane operating on rails, tracks or trolleys be equipped with a positive stop or limiting device, or that the stop or limiting device be attached to the rails, tracks or trolleys.

OHS ENFORCEMENT

May 1: Even as the current COVID public health restrictions enforcement crusade continues, Alberta is carrying on with its year-long OHS inspection campaign targeting the construction sector with a focus on subsectors that have high injury rates, including residential, roofing, drywall, heating systems, framing and brick or masonry.

OHS GUIDELINES

May 1: Alberta OHS regulators issued new or revised guidelines on a trio of topics:

- [Positive stop or limiting devices and multiple-overhead crane lifts](#)
- [Driving safety](#)
- [Vehicles as work sites.](#)

OHS REFORM

May 10: Alberta ended its online survey on the current *OHS Code*, the first official review since 2009. The survey is stage 1 of a 3-stage OHS review and reform process that will continue well into 2023.

RETURN TO WORK

Apr 1: The new [Bill 47](#) duty of workers to cooperate in the return to work process took effect. The duty to cooperate is designed to replace the previous duty of employers to reinstate injured workers with over 12 months' service. The new rule isn't retroactive and the reinstatement obligation remains in

place for workers with an accident date between September 1, 2018, when the reinstatement rule first took effect, to March 31, 2021.

SELF-ISOLATION BENEFITS

Feb 1: In December, Alberta launched a new program to deploy mobile teams to help front-line workers living in Calgary and Edmonton and who had to self-isolate find hotel rooms. Now the province is expanding the Emergency Isolation Assistance Program to all Albertans who must self-isolate but can't do so at home. The program covers 14 days of hotel and meal costs.

SMERG

Apr 13: Alberta reopened the Small and Medium Enterprise Relaunch Grant program that was due to expire in March to provide relief to businesses affected by the April shutdowns. Under this new round, employers can get up to \$10,000 in SMERG funds to cover PPE, cleaning supplies, rent, wages or other business expenses. Deadline to [apply](#): May 31, 2021.

TRAFFIC SAFETY

Dec 1: Stricter penalties for impaired driving took effect, including:

- Fines of up to \$2,000
- Vehicle seizures of up to 30 days
- Mandatory ignition interlock and new mandatory education programs for repeat offenders.

VACCINATION LEAVE

Apr 21: Newly passed [Bill 71](#) gives employees special paid leave of up to 3 hours to get the COVID vaccination without loss of pay, vacation and benefits. Employees actually get 6 paid hours to the extent that they can use the full 3 hours for 2 different vaccines. As in Saskatchewan, all employees qualify regardless of how long they've been employed and employers may provide additional paid leave if they think the situation warrants, for example, if employees get ill as a result of the vaccination.

WAGE BENEFITS

Jul 23: That's the deadline for employers [to apply](#) for the \$1,200 Critical Worker Benefit, which has been expanded to new job categories, including truck drivers, farmworkers, security guards, cleaners, funeral workers, quick service and dine-in restaurant employees and taxi drivers. To be eligible, employees must have worked at least 300 hours during the period from Oct. 12, 2020 to Jan. 31, 2021; the minimum requirement for support staff in licensed child care is 243 hours.

WCB

Feb 15: Comments ended on proposed WCB policy changes made in response to [Bill 47](#) affecting:

- [New policy](#) on Fair Practices Office review
- Duty to cooperate in return to work process ([Policy 04-11](#))
- Egregious conduct justifying termination of modified work ([Policy 04-05](#))
- [Policy](#) on reinstatement of maximum compensable earnings cap.

Mar 1: The Alberta WCB resumed regular invoicing as well as the pre-authorized debit program which was suspended due to the COVID pandemic last year. That means the agency will once more withdraw workers comp premiums from the bank accounts of employers that sign up for the PAD program.

WORKERS COMP

Nov 18: Controversial legislation ([Bill 47](#), aka, the *Ensuring Safety and Cutting Red Tape Act, 2020*) that would roll back pro-worker workers comp changes adopted under the previous Alberta NDP government is in Second Reading. Key changes, which would take effect September 1, 2021:

- Eliminate mandatory requirement for employers to reinstate injured workers with over 12 months' service
- Restore insurable earnings cap to either 90% of a worker's net earnings at time

- of injury or a maximum set by WCB
- Eliminate presumptive coverage of psychological coverage except for first responders
 - Shut down the Fair Practices Office and Medical Panels Office set up to help injured workers navigate the WCB system
 - Eliminate requirement that employers continue making health plan contributions for workers off work due to work injuries.

Dec 1: Comments closed on revisions to Alberta WCB [Policy 04-04, Part II, Application 5](#) on permanent disability awards midpointing rules for pre-1995 claims. Specifically, the agency will make its current practice of midpointing between the last and current assessment official policy.

Dec 1: The Alberta WCB announced that it's keeping 2021 average workers comp premiums at \$1.14 per \$100 for the third year in a row. While the numbers call for a rate increase, the COVID situation militates against it. So, the agency will dip into the Accident Fund to keep rates the same. However, employers will still have to pay their deferred 2020 WCB premiums by January 1, 2021.

Dec 9: Alberta passed controversial legislation ([Bill 47](#), aka, the *Ensuring Safety and Cutting Red Tape Act, 2020*), scaling back workers comp benefits and coverage. After a set of initial changes taking effect on

January 1, the following changes will go into effect on April 1:

- Elimination of requirement for employers to reinstate injured workers with over 12 months' service replaced by duty to cooperate in worker's safe return to work
- Deadline for appeals to Appeals Commission reduced to one year in line with the one-year window for Dispute Resolution and Decision Review Body review
- Fair Practices Office shut down and Medical Panels Office established to help injured workers navigate the WCB system
- Employers no longer required to keep making health plan contributions for workers off work due to work injuries.

Jan 1: The first round of changes to workers comp coverage and benefits under newly passed controversial legislation ([Bill 47](#), aka, the *Ensuring Safety and Cutting Red Tape Act, 2020*) take effect:

- Elimination of requirement for employers to reinstate injured workers with over 12 months' service
- Restoration of insurable earnings cap to either 90% of a worker's net earnings at time of injury or a maximum set by WCB (\$98,700 for 2021)
- Elimination of presumptive coverage of psychological injuries except for first responders, correctional officers and emergency dispatchers

- WCB to pay benefits to workers terminated from modified work due to willful egregious conduct as if modified work was still in place.

Jan 12: The WCB announced that the 2021 cost of living adjustment (COLA) amount for workers comp benefits is 0.84%. The claims cost threshold for no-time-lost claims used in experience rating will remain at \$1,500.

Mar 2: The WCB updated the formula it uses ([Policy 04-04](#), Part II, Application 5) to determine the effective date of a change in a worker's pre-1995 pension when the worker's permanent clinical impairment rating has increased since the last assessment. The revised policy confirms that the correct process is to midpoint between the current assessment and the one immediately before it.

Apr 1: A new round of changes under [Bill 47](#), aka, the *Ensuring Safety and Cutting Red Tape Act, 2020*, take effect:

- Elimination of requirement for employers to reinstate injured workers with over 12 months' service
- Restoration of insurable earnings cap to either 90% of a worker's net earnings at time of injury or a maximum set by WCB (\$98,700 for 2021)
- Elimination of presumptive coverage of psychological injuries except for first responders, correctional

officers and emergency dispatchers

- WCB to pay benefits to workers terminated from modified work due to willful egregious conduct as if modified work was still in place.

Apr 1: Effective today, the new Fairness Review Officer established by [Bill 47](#) will review the fairness of the WCB's process of deciding claims. The appeals procedures and process of reviewing actual WCB decisions will stay the same.

Apr 1: Employers are no longer required to contribute to health benefit plans for injured workers who are away from work due to claims related to accidents on or after April 1, 2021. The WCB will continue to pay those workers medical and rehab benefits through the life of their claim; employers may also opt to cover the worker's health benefits after the injury if they want to.

Jun 1: The WCB published [data](#) on 2020 COVID claims:

- Total claim notifications: 6,210
- Claim notifications where no illness developed: 709
- Total accepted claims: 4,800
- Total claims found not to be work-related: 1,288
- Fatality claims accepted: fewer than 5.

Jun 3: Newly tabled Private Member [Bill 219](#) would establish the presumption that COVID is work-related when the claimant is an essential worker. It would also reinstate the PTSD presumption for

all workers, effectively undoing recent government legislation narrowing the presumption to certain emergency response workers.

Jul 6: From now through Oct. 4, the Alberta WCB is holding public consultations on:

- The [Policy Project Plan](#), or list of workers comp policies the agency should review
- [Policy 04-10](#), Part II, Application 3: Reimbursement of housekeeping expenses prior to December 1, 2013
- [Policy 07-02](#), Part II, Application 6: Third party recoveries
- [Policy 05-02](#), Part II, Application 1: General (cost relief) (Policy 04-10, Part II, Application 3).

WORK INJURIES

May 1: Lost time injury rates ticked up from 1.6 to 1.8 per 100 workers in 2020. Here are some of the other key metrics from the Alberta WCB's newly published [2020 Annual Report](#):

- New claims: 107,588 (vs. 129,851 in 2019)
- Lost time claims: 30,300 (30,100)
- Disabling injury claims (per 100 workers): 2.7 (2.7)
- Fatality claims accepted: 150 (165)
- WCB funded ratio: 120.7% (119.2%).

WORK REFUSALS

Nov 18: Second Reading for [Bill 47](#), aka, the *Ensuring Safety and Cutting Red Tape Act, 2020*, which would make it harder for workers to refuse work by banning refusals related to hazards that are normal for the job, a requirement many jurisdictions impose, and specify that the hazard must be “undue.” The bill would also add new radiation safety protections to Alberta OHS laws. All changes would take effect September 1, 2021.

Jan 1: OHS changes under [Bill 47](#), aka, the *Ensuring Safety and Cutting Red Tape Act, 2020*, ban work refusals related to hazards that are normal for the job, a requirement many jurisdictions impose. For refusals to be justified, the hazard must now also be “undue.”

CASES

WAS WORKER FIRED AFTER WORK REFUSAL FIRED BECAUSE OF WORK REFUSAL?

On his second day of work, a plant worker engaged in a work refusal due to concerns about asbestos. The worker was apparently quite upset and behaving aggressively. To avoid a potential disturbance, the supervisor asked the worker to go home and await the results of air sampling tests. What happened next is unclear. The supervisor claimed the worker went through the halls yelling and screaming; the worker denied the charges. What was undisputed is that the worker got fired. The worker claimed reprisal and the OHS official who investigated the matter. The Alberta Labour Relations Board rejected the employer's request to toss the complaint. Since the evidence was conflicted, the case should proceed to a hearing, it concluded [[Bortnik v Irwin's Safety and Labour Services Ltd.](#), Board File No. OHS 2020-18, November 12, 2020].

DRILLING COMPANY FINED \$161,000 FOR FAILING TO CONTROL PUMPING EQUIPMENT

Drilling workers performing pressure testing suffered serious injuries when the equipment they were using spun out of control. The employer was found guilty of 2 OHS violations, including allowing a machine or equipment to operate without an

operator at the controls and was fined \$161,000 [[Weatherford Canada Ltd.](#), September 15, 2020].

INJURED NURSE WANTS TO RETURN TO WORK BUT THERE'S NO JOB SHE CAN DO

A registered nurse on paid medical leave for the third time due to work injuries wanted to attempt another return but her employer, Alberta Health Services, currently had no available positions she was capable of doing. The nurse claimed disability discrimination, but the internal government investigator disagreed. On appeal, the Alberta Human Rights Commission found that the investigator's conclusion that AHS made reasonable efforts to accommodate the nurse and didn't retaliate against her for filing a complaint was reasonable and upheld the decision [[Pearn v Alberta Health Services](#), 2020 AHRC 82 (CanLII), November 18, 2020].

EMPLOYER FINED \$320,000 FOR FATAL CRANE INCIDENT

Two workers were using a gantry crane to move precast concrete slabs in a storage yard. One of the slabs unhooked from the crane, tipped over and pinned one of the workers against the second slab. The resulting injuries were fatal. The employer pled guilty to failing to ensure that the storage racks used to hold concrete panels were free of snow and ice. Result: A \$320,000

fine [*Lafarge Canada Inc.*, November 20, 2020].

NURSE'S N95 OHS WORK REFUSAL CLAIM DESERVES A HEARING

A registered nurse refused to perform COVID-19 swab testing on patients without an N95 particulate filter respirator. The employer contended that it was following public health guidelines, noting that it provided other PPE, N95 masks are required only for aerosol generating medical procedures and swab testing isn't an AGMP. The OHS investigator found no danger and dismissed the refusal and the nurse appealed. The Alberta Labour Relations Board refused to dismiss the appeal and ordered the case to go to a full hearing [[Appeal of a Decision in a Director's Review brought by Alix Berube](#), Board File No. OHS 2020-11, January 14, 2021].

FIRING ALCOHOLIC EMPLOYEE FOR COMING TO WORK IS DISABILITY DISCRIMINATION

What would you do if one of your employees showed up late to work intoxicated by alcohol and prescription drugs, interrupted a staff meeting and belligerently cussed out his boss to the point where you had to call his wife to pick him up and take him home? The car dealer in this case decided on termination. And while that might have been justified for a casual drinker, the employee in this case had an alcohol dependency. So, the Alberta Human

Rights Tribunal found disability discrimination and awarded the employee \$30,000 in damages. The dealer knew or should reasonably have known of the employee's dependency which rendered him incapable of complying with its workplace sobriety policy and at least considered making accommodations to the point of undue hardship [[Kvaska v Gateway Motors \(Edmonton\) Ltd.](#), 2020 AHRC 94 (CanLII), December 14, 2020].

MANAGER USED SAFETY INCIDENT AS EXCUSE TO GET RID OF SUPERVISOR

For 13 years, a mill safety supervisor worked productively without any incidents or poor performance issues. But then a new manager, Mr. C, took over. While it was dislike at first sight, Mr. C fired the first shot by issuing the supervisor his first ever performance warning for declining department productivity. The supervisor considered the warning unfair and relations worsened. Mr. C persuaded his superiors to fire the supervisor for failing to report a welding incident. After hearing all the witnesses, the Alberta court found that Mr. C's story lacked credibility. Although the welding incident merited discipline, the court concluded that Mr. C's real reason for firing the supervisor was that he deemed him disrespectful and unwilling to treat him like "the boss." According to the court, Mr. C's emails to upper manager were "just short of being hysterical and so obviously an attempt to" overblow what were really "very manageable employment issues." But while

awarding the supervisor one year's notice, the court nixed punitive damages [[Baker v Weyerhaeuser Company Limited](#), 2020 ABQB 808 (CanLII), December 23, 2020].

OK TO FIRE BUS DRIVER FOR DISTRACTED DRIVING

There was no dispute that a city bus driver ate rice from a bowl with both hands while driving the bus. The question was whether he deserved to be fired for it. The Alberta arbitrator said yes. The incident was very serious; although the driver was diabetic, there was no medical evidence to show that he had to eat the rice at that moment to be capable of making sound judgments while driving; the driver had been disciplined for previous safety violations; the city had fired other drivers for distracted driving; and the driver refused to apologize for the offence [[Corporation of the City of Calgary v Amalgamated Transit Union Local 583](#), 2020 CanLII 100556 (AB GAA), December 9, 2020].

WORKER WHO SIGNED SEVERANCE RELEASE CAN'T BRING OHS REPRISAL CLAIM

A worker who complained about being harassed by his supervisor was put into the company Performance Improvement Plan and terminated 3 months later. He claimed retaliation but the OHS officer rejected the case because he signed a severance release granting 52 weeks' pay and 15 weeks of benefits. The worker contended the release was unenforceable but the

Alberta Labour Board disagreed, finding that the release was clearly worded and fair and that the company gave him ample opportunity to review it and run it by a lawyer [[Winters v. Finning Canada](#), Alberta Labour Relations Board File No. OHS2019-16, February 5, 2021].

CONSTRUCTION FIRM SOCKED WITH \$172,000 PENALTY FOR WORKER'S TRAFFIC DEATH

A passing vehicle smacked into a track hoe causing the load to move in reverse. The worker standing behind the load was in the wrong place at the wrong time and lost his life as a result. After pleading guilty to one OHS offence, the victim's employer was given 2 years' corporate probation, fined \$1,150 and ordered to shell out \$170,850 to finance the creation of a traffic safety course for construction workers [[Candesto Enterprises Corp.](#), December 2, 2020].

MISSING MACHINE GUARD LEADS TO MUTILATION OF WORKER'S ARM AND \$132,000 FINE

A maintenance mechanic at a food processing plant showing 2 workers how to operate an MSI hide wringer got his arm caught and drawn into the unguarded machine. Although he survived, the injuries were gruesome. The employer pled guilty to 2 OHS violations, including failure to ensure that the hide wringer was fitted with a safeguard on its in-feed side, and fined \$132,000, all but \$1,000 of which will go to creating an

online, one-hour, 3D simulation safety training program for food processing workers [*JBS Food Canada ULC*, November 24, 2020].

NOT ENOUGH EVIDENCE TO FIRE WORKER FOR SEXUAL HARASSMENT

Based on the allegations of 3 employees, a rehab facility for the visually impaired fired a skilled support worker for sexually harassing young men in her department. The worker vehemently denied the charge and claimed she was the victim of a witch hunt. How come none of the accusers ever actually complained to management? And was it just a coincidence that all 3 of them were angry at her for recently exercising her bumping rights at their expense? And wasn't this just a perfect excuse for management to finally get rid of a worker it long resented for her union activism? We may never learn the answers. But to win the case, the employer had to come up with evidence to refute these arguments and prove it had just cause to terminate. Since it failed to meet that burden, the Alberta arbitrator reinstated the worker with no loss in pay [*Vision Loss Rehabilitation Alberta v United Food And Commerical Workers, Local 401*, 2021 CanLII 5490 (AB GAA),

EMPLOYER FINED FOR “EGREGIOUS” USE OF SWING STAGE SCAFFOLD ON WINDY DAY

An OHS inspector spotted window washers operating a swing stage scaffold on a windy day with forecasted gusts of up to 50 km. Upon discovering that the manufacturer's instructions advised against using the equipment in winds of 40 km or more, the inspector hit the employer with a \$5,000 administrative monetary penalty for an “egregious” violation. The employer appealed, insisting that supervisors were monitoring wind conditions on their weather apps but the inspector didn't believe the story. The Alberta Labour Relations Board refused to second guess his evaluation on credibility, agreed that the employer didn't exercise due diligence and upheld both the penalty and penalty amount [*2298679 Ontario Inc. o/a Aurum Property Care*, Board File No. OHS2020-4, March 11, 2021].

EMPLOYER MUST SEEK TO ACCOMMODATE SAFETY-SENSITIVE WORKER'S ALCOHOLISM

After nearly 16 years of excellent performance, a millwright found himself on the wrong end of progressive disciplinary actions for lateness, harassing a colleague and other offences, culminating in his termination. Not coincidentally, the problems began when the millwright developed a drinking problem. The union contended that the

dependence caused the misconduct and claimed disability discrimination. The Alberta arbitrator agreed and reinstated the millwright without loss of pay or seniority. The fact that the position was safety-sensitive didn't justify the company's decision to fire him without even trying to accommodate him. Nor could the company blame the millwright for failing to come forward and seek help since it didn't have a mandatory self-disclosure policy [[United Steel-Paper And Forestry, Rubber, Manufacturing, Energy, Allied Industrial And Service Workers International Union, Local 5220 v Altasteel](#), 2021 CanLII 7103 (AB GAA), February 3, 2021].

TRUCK DRIVER FIRED FOR NOT DISCLOSING MEDICAL MARIJUANA USE

Why did the concrete trucking company fire a safety-sensitive driver who legally used medical marijuana? The driver claimed he disclosed his marijuana use before undergoing post-incident testing and got fired for testing positive for marijuana. So, he sued the company for disability discrimination and failure to accommodate. The company claimed he was fired not for the positive test result but because he never disclosed his medical marijuana use as required by the company's drug policy. The Alberta Human Rights Commission sided with the company after finding no evidence that the driver ever mentioned or that the company ever knew about his medical marijuana use until after the lawsuit. And since failure to disclose was the real

violation, the actual test results were irrelevant [[Bird v Lafarge Canada Inc.](#), 2021 AHRC 50 (CanLII), February 23, 2021]

HIGH COURT UPHOLDS DENIAL OF INJURED WORKER'S WAGE REPLACEMENT BENEFITS

A worker's 7-year litigation battle to get his worker comp wage replacement benefits restored came to an end when the Alberta Court of Appeal upheld the Appeals Commission's denial as reasonable. The Commission considered all of the medical evidence relating to the worker's face, scalp and neck injuries; and it took into account how the decision to terminate the benefits impacted the worker's life and livelihood [[Gezehegn v Alberta \(Appeals Commission of the Workers' Compensation Board\)](#), 2021 ABCA 93 (CanLII), March 15, 2021].

STOP WORK ORDER APPEAL LEADS TO CITATION FOR OHS VIOLATION

What began as an appeal of a stop work order requiring a building contractor to stop using a backup proximity sensor on a Ford F-350 pickup truck after modifications to the vehicle compromised the sensor's effectiveness. But the OHS officer raised the stakes by citing the contractor for an OHS violation. The contractor claimed that this was an abuse of the officer's powers but the Alberta OHS tribunal disagreed. There was no violation of the OHS appeals procedures. And the

determination that the device was out of compliance was reasonable [[Ledcor Pipe & Infrastructure v Alberta \(Occupational Health and Safety\)](#), File No.: OHS2020-6, April 26, 2021].

DENTAL ASSISTANT FIRED FOR UNLICENSED PRACTICE, NOT AS RETALIATION

A Registered Dental Assistant claimed she was fired as a reprisal for telling his boss to provide workers who take x-rays a dosimeter to protect their safety. The employer contended she was fired for carrying out operations RDAs aren't licenced to perform, namely, using a high-speed dental device in a patient's mouth, an operation that an RDA. The OHS officer sided with the employer. The RDA appealed, but to no avail. The Alberta OHS tribunal found the RDA's evidence of having raised the concern about the dosimeter unconvincing, especially since the employer had a complete dosimeter x-ray safety program. And 2 witnesses testified that she had, in fact, performed unlicensed operations [[Jingpei Duan v Pro Grace Dentistry](#), File No. OHS2019-11, April 22, 2021].

MISSED FILING DEADLINE IS DEATH KNEEL FOR WORKER'S RETALIATION CASE

They say that a person who acts as his own lawyer has a fool for a client. One individual who probably now agrees with that old saying is the university employee who claimed he was defamed and retaliated against

for complaining of workplace harassment. After striking out in the Alberta OHS tribunal and Human Rights Commission, the employee sued the union for doing a lousy job of representing him in the case, this time acting as his own lawyer. Sure enough, though, he got bad advice from his social worker—also not a lawyer—and missed the filing deadline as a result. After still another tribunal denied him an extension after the fact, the employee appealed all the way to the Alberta Court of Appeal. But the high court refused to cut him any slack [[Lam v University of Calgary](#), 2021 ABCA 145 (CanLII), April 22, 2021].

LAI D OFF IRONWORKER LOSES HIS OHS REPRISAL CASE

Frustrated by repeated denials of time off to care for his ailing father, an ironworker finally asked that he be laid off. At least that was the employer's version of the story; the ironworker claimed he was laid off for pointing out that fall protection on the worksite didn't comply with required CSA standards and reporting an injury. After going through all of the evidence, the OHS evidence sided with the employer and tossed the ironworker's reprisal claim. The Alberta Labour Board found the ruling reasonable and refused to overturn it [[Pelletier v. Kiewit Energy](#), Board File OHS 2020-19, May 12]

COVID RESTRICTIONS ON RELIGIOUS GATHERINGS DON'T VIOLATE CHARTER RIGHTS

The RCMP ticketed and later arrested a pastor for violating public health restrictions on the number of attendees allowed at religious services. Rather than pay the fines, the pastor chose to remain in custody and filed a lawsuit challenging the constitutionality of COVID restrictions on religious gatherings. But the Alberta court was unmoved and tossed the case. Limiting religious gatherings to contain COVID was a necessary health measure that didn't violate the pastor's rights to free speech, religious freedom and right to public assembly, it concluded [[R v Coates](#), 2021 ABPC 162 (CanLII), June 7, 2021].

UNION LOSES TERMINATION CASE BECAUSE IT WAITED TOO LONG TO NAME ARBITRATOR

After an employee was fired for allegedly assaulting a co-worker, the union filed a grievance the very next day. But it took the union 26 months to actually appoint the arbitrator. The employer said the delay was too long and asked the arbitrator to dismiss the case. The Alberta arbitrator agreed. Two things were clear: 26 months was an excessive delay and the union's procrastination was responsible for it. The only question was whether the delay prejudiced, i.e., hurt the employer's case. I'm not a big fan of the idea that prejudice is based on the passage of time, "there comes a point where the amount of

time passed becomes so excessive" that it does real damage to the memories of the witnesses. This case has reached that point, the arbitrator concluded, and the Alberta Court of Appeal upheld that ruling [[United Food and Commercial Workers Canada Union, Local No 401 v Sofina Foods Inc](#), 2021 ABCA 191 (CanLII), May 20, 2021].

WORKER CLAIMS CO-WORKERS' NFL FANTASY DRAFT SNUB IS BULLYING

This oddball case began with the extreme distress an accountant felt at not being invited to participate in her co-workers' annual NFL fantasy draft. The accountant made her feelings known by "aggressively" "cornering" the CFO in a washroom and "aggressively" claiming she was the victim of harassment and bullying. She was let go a week later. The employer claimed her OHS reprisal complaint was frivolous, noting that the fantasy draft wasn't even an official company event and insisting that the accountant was fired because she couldn't keep up with her growing workload. The OHS investigator agreed and summarily tossed the case. But he later admitted that he had ignored certain evidence, like the fact that the accountant had been invited to the draft in the past. The Alberta Labour Board said that a hearing was needed to straighten out the mess and consider whether "subjective feelings" experienced as a result of social exclusion at work really is a form of harassment and bullying [[Little v. Rolling Hills Energy Ltd.](#),

Board File OHS 2019-6, May 28,
2021].

BRITISH COLUMBIA

LAWS & ANNOUNCEMENTS

ACCESSIBILITY

Apr 28: BC launched its effort to make the province accessible to the disabled. Newly tabled [Bill 6](#) would give the government to adopt broad standards and regulations patterned after the federal and Ontario models, including requirements that employers create and implement workplace accessibility plans.

Jun 3: BC launched its effort to make the province accessible to the disabled. [Bill 6](#), which just passed Third Reading, would give the government authority to adopt broad standards and regulations patterned after the federal and Ontario models, including requirements that employers create and implement workplace accessibility plans.

BORDER RESTRICTIONS

Apr 23: In response to new COVID-19 variants, BC banned non-essential travel between and among 3 regional health authority zones through at least May 25:

- Lower Mainland and Fraser Valley (Fraser Health and Coastal Health regions)

- Vancouver Island (Island Health region)
- Northern/Interior (Interior Health and Northern Health regions).

CARBON DIOXIDE

Mar 9: WorkSafeBC issued a [risk advisory](#) for workers who handle or come into contact with dry ice used for packing COVID vaccines. Dry ice is solid carbon dioxide that can cause frostbite, loss of consciousness, chemical burns and explosions, particularly in storage areas, walk-in coolers or other enclosed spaces with poor ventilation.

CLIMATE CHANGE

Dec 16: BC adjusted its greenhouse gases emission target to require reductions of 16% below 2007 levels by 2025. The province also plans to announce emissions targets for particular sectors before March 31, 2021. The ultimate goal is net-zero emissions by 2050.

Jul 2: BC revised its Greenhouse Gas Reduction (Clean Energy)

Regulation to allow increased production and use of hydrogen and other renewable gases. Highlights:

- Amount of renewable gas utilities may acquire and store increased from 5% to 15% of their total annual supply of natural gas
- New methods utilities can use to obtain hydrogen and other renewable gases
- Allowing current price cap of \$30 per gigajoule that utilities can pay to acquire renewable gases to increase with inflation
- Allowing utilities to acquire and provide green and waste hydrogen, synthetic gas and lignin.

COMPRESSED AIR

Feb 11: WorkSafeBC issued [proposed new guidelines](#) specifying that it accepts CSA Z275.3-09 as an alternative standard for work in compressed air environments under *OHS Regulation, Part 20, Construction, Excavation and Demolition*. The plan is to finalize the guideline on April 11, 2021.

Apr 11: WorkSafeBC finalized [new guidelines](#) specifying that it accepts CSA Z275.3-09 as an alternative standard for work in compressed air environments under *OHS Regulation, Part 20, Construction, Excavation and Demolition*. The plan is to finalize the guideline on April 11, 2021.

CONTRACTORS

Jun 10: BC revised its regulations

for contracting and resolving contractual disputes with forestry contractors. Highlights:

- Require licence holders to provide contractors clearer work specifications
- Revised test rate that arbitrators use to determine fair pay rates in contract disputes
- Revised definition of “changed circumstances” triggering further rate negotiation under a contract.

COR

Jan 1: WorkSafeBC will begin testing [proposed improvements](#) to auditing rules used to determine whether employers qualify for Certificate of Recognition recognition and thus qualify for workers comp rebates. Highlights:

- New audit standard based on a single management system
- New WorkSafeBC-authored audit tool
- Standardized training requirements for COR auditors
- External auditing of all employers, not just small employers
- Newly standardized audit scope.

COVID-19 ENFORCEMENT

Dec 4: Since the pandemic began, BC police agencies have issued 64 tickets imposing fines totalling \$70,000 against individuals for violating public health quarantine rules.

Jan 8: From now on, if you get ticketed for a COVID offence, you'll have to pay the fine right away. That's because new enforcement measures authorize ICBC, the agency that collects COVID ticket fines, to send accounts against deemed-guilty offenders immediately to collection without waiting for the 30-day payment or dispute period to expire. WorkSafeBC has also stepped up in-person inspections, especially in sectors experiencing high numbers of COVID cases.

Feb 12: WorkSafeBC has done 22,122 workplace investigations and issued 1,667 orders for COVID offences since the pandemic began. But even as inspectors continue to crack down, the agency launched a new awareness campaign to help employers comply with COVID restrictions. Specifically, the initiative focuses on measures employers should take to assess COVID hazards and implement infection controls in lunch rooms, hallways, meeting areas and other parts of the workplace.

May 12: Less than a month after increasing minimum fines for violating COVID public health restrictions, BC tabled legislation that would bar people with unpaid fines to obtain or renew a driver's licence. As of May 15, WorkSafeBC has conducted nearly 28,000 COVID inspections and issued 3,199 stop work and other orders for violations.

COVID-19 LEAVE

May 20: Newly passed Bill 13 provides employees 3 days of

temporary sick leave at regular pay covering not only vaccination but also illness, self-isolation, caregiving and other COVID-related lost time:

- Covers all employees regardless of how long they've been employed
- Doesn't cover employees that have paid sick leave through their employer
- Government to reimburse up to \$600 per employee--\$200 per day
- COVID leave becomes permanent paid sick leave for any illness starting Jan. 1, 2022, but only for employees with at least 90 days' consecutive employment.

COVID-19 RESPONSE

Jul 1: BC entered Step 3 of its Restart Plan under which employers must transition from a COVID-19 Safety Plan to a general communicable disease plan that meets new [WorkSafeBC guidelines](#).

Key elements:

- Policies enabling workers with a communicable disease to stay home
- Promoting hand hygiene by posting signs and supplying wash facilities, soap and disinfectants
- Routine cleaning procedures
- Ensuring building ventilation is properly maintained and functioning as designed
- Supporting vaccine for vaccine preventable conditions to the extent possible
- Obeying public health orders.

DISABILITY BENEFITS

Jan 1: WorkSafeBC proposed [revisions](#) to workers comp policies to incorporate the new changes to permanent partial disability benefits rules under Bill 23. Deadline to comment: April 16.

Apr 16: Comments ended on WorkSafeBC's proposed [revisions](#) to workers comp policies to incorporate the new changes to permanent partial disability benefits rules under Bill 23.

DIVING

Jan 12: Comments closed on WorkSafeBC preliminary revised [Guidelines](#) on determining whether a work site meets the definition of "dive site" under OHS Regulation Part 24, Diving, Fishing and Other Marine Operations.

DRUGS & ALCOHOL

Jun 29: An average of 5.2 people died from toxic and illegal drugs every day during the month of May. The 851 lives lost between January and May are the most ever reported in the first 5 months of a calendar year in BC, topping the previous record of 704 in January-May 2017 by almost 12%.

ELECTRIC VEHICLES

Dec 10: WorkSafeBC issued a new [risk advisory](#) about the risks of fire, explosion and contact with electricity when servicing electric vehicles or working with damaged EV batteries.

Jan 13: CleanBC is increasing rebates for specialty-use zero emissions commercial vehicles to 33% of vehicle costs up to a maximum of \$100,000 per vehicle, up from the previous maximum of \$50,000. In addition, tourism companies, including restaurants and other hospitality businesses, are eligible for double SUVI rebates and can access 66% of the cost of an eligible medium- or heavy-duty vehicle, such as a food delivery vehicle or shuttle bus, up to \$100,000 per vehicle.

EMERGENCY RESPONSE

Mar 11: WorkSafeBC issued [new guidance](#) on how to provide firefighter response training to workers with such duties as part of the emergency response plan (under Section 4.16 of the *OHS Regulation*).

Jul 1: With wildfires raging across much of the province, BC published instructions explaining what residents should do if they get an evacuation alert or order. Prepare an emergency kit and important personal papers like insurance documents now just in case, the government advises.

ERGONOMICS

Feb 15: WorkSafeBC revised its [policy](#) on workers comp coverage of overexertion injury. **Key change:** Clarification that overexertion may still be considered work-related even if the injury results from work activities to which the worker is accustomed and has done in the past without injury. The new policy

instructs the Board “to examine the details of how the work activity was performed.”

EXPOSURE LIMITS

Jan 4: WorkSafeBC approved the adoption of 2016, 2017 and 2018 ACGIH TLVs for 12 chemical substances:

- n-Butyl acetate
- sec-Butyl acetate
- tert-Butyl acetate
- Dimethylacetamide (aka, N,N-dimethylacetamide)
- Dimethylformamide
- Ethyl cyanoacrylate
- Isobutyl acetate
- Methyl 2-cyanoacrylate
- Isopropyl acetate
- n-Propyl acetate
- Stearates
- Zinc stearate.

FACE MASKS

Nov 19: With COVID cases on the rise, it’s now mandatory for employers in BC to implement a policy requiring all workers and customers to wear masks at indoor workplaces in any location where they’re in shared space with other people. Such policies must also be clearly communicated and strictly enforced.

Dec 2: It’s now mandatory for employers in BC to implement a policy requiring all workers and customers to wear masks at indoor workplaces in any location where they’re in shared space with other people. New WorkSafeBC guidance clarifies that face shields **are not** an acceptable alternative to face masks

and face coverings. Face shields are designed to protect the user from splashes, spills and impact; they’re not effective in preventing users from breathing the respiratory droplets that carry the COVID virus. However, face masks can, and in cases where workers are exposed to eye and face injuries, must be used with face shields.

Jan 8: If your workplace is still open, consider posting the new BC Human Rights Commissioner face mask [poster](#) alongside your other COVID notices and signs. The poster explains who is and isn’t exempt from the mandatory mask order and advises employers to take people at their word if they claim they’re exempt.

FARM WORKERS

Mar 11: BC extended its quarantine program for temporary foreign workers coming to the province for seasonal work. Accordingly, federal officers will continue to screen temporary foreign workers who arrive in Canada. Those with COVID symptoms will be placed in quarantine at a hospital for 14 days. They can then proceed to the farm provided that they no longer have symptoms. As before, BC will fund the hotel, food-service, laundry and other costs workers incur while they’re in quarantine.

HEALTH CHECKS

Nov 19: Pre-entry COVID screening is no longer enough. New BC emergency orders require employers to ensure that all workers do a daily

health check on themselves before letting them enter the workplace. Acceptable methods include having workers complete an online health check form and verbal checks coupled with written records showing verbal confirmation was given. However, employers aren't allowed to ask or record specific questions about a worker's health. If workers don't provide adequate confirmation, you can't let them enter.

LIGHTING

Mar 11: WorkSafeBC revised its [guidance](#) on how to comply with OHS requirements for brightness, reflectance and glare (*OHS Regulation*, Section G4.67) and measurement of illumination (Section G4.68).

MACHINERY & EQUIPMENT

Feb 11: WorkSafeBC posted for 60-day review proposed changes to different parts of OHS guidelines under *OHS Regulation*, Part 12 Tools, Machinery and Equipment, including:

- G12.20 [Reach distance to overhead power transmission parts](#)
- G12.28(3) [Emergency stopping devices](#)
- G12.29 [Power presses, brake presses, and shears](#)
- G12.120 [Reverse gas flow and flashback prevention](#).

Apr 11: WorkSafeBC finalized proposed changes to different parts of OHS guidelines under *OHS Regulation*, Part 12 Tools, Machinery and Equipment, including:

- G12.20 [Reach distance to overhead power transmission parts](#)
- G12.28(3) [Emergency stopping devices](#)
- G12.29 [Power presses, brake presses, and shears](#)
- G12.120 [Reverse gas flow and flashback prevention](#).

NOTICE OF PROJECT

Jan 12: Comments ended on WorkSafeBC's newly posted revised [Guidelines](#) on notice of project (NOP-H) requirements for ongoing asbestos work under OHS Regulation Part 20, Construction, Excavation and Demolition.

OELs

Jun 22: WorkSafeBC [proposed](#) new or changed occupational exposure limits for the following substances (the deadline to comment is August 13):

- Chlorine (8-hour TWA only)
- Ethyl Isocyanate
- Phenyl isocyanate
- Hard metals, containing Cobalt and Tungsten carbide, as Co
- Tungsten and compounds in the absence of Cobalt, as W.

Aug 13: That's the last day to comment on WorkSafeBC's [proposed](#) new or changed occupational exposure limits for:

- Chlorine (8-hour TWA only)
- Ethyl Isocyanate
- Phenyl isocyanate
- Hard metals, containing Cobalt and Tungsten carbide, as Co

- Tungsten and compounds in the absence of Cobalt, as W.

OHS CHANGES

Jun 1: WorkSafeBC officially approved changes to the following OHS Regulations, which will take effect on Sept. 1:

- Part 6: [Restricted entry intervals](#) for pesticide application
- Part 8: [High visibility apparel](#) standards
- Part 8: [Safety headgear](#) standards
- Part 16: [Mobile equipment](#).

Sep 1: That's when changes to the following OHS Regulations will officially take effect:

- Part 6: [Restricted entry intervals](#) for pesticide application
- Part 8: [High visibility apparel](#) standards
- Part 8: [Safety headgear](#) standards
- Part 16: [Mobile equipment](#).

OHS ENFORCEMENT

Nov 10: As COVID cases surge, WorkSafeBC is stepping up inspections in the Vancouver Coastal and Fraser Health regions, prioritizing high-risk workplaces where social distancing is difficult to maintain and/or sharing of tools, equipment and surfaces is frequent. Since the pandemic began, WorkSafeBC has conducted more than 18,000 COVID-related workplace inspections and issued 667 orders for OHS violations.

Mar 10: WorkSafeBC unveiled its [2021-2023 High Risk Strategies](#) plan. Industry sectors with high risk of serious injury that the agency has targeted for priority scrutiny: Construction; Forestry; Health Care and Social Services; and Manufacturing.

Apr 23: WorkSafeBC [published](#) its 2021-2023 high-risk strategies for construction, forestry, health care and manufacturing. In addition, the agency will carry out Industry Initiatives targeting, among others:

- Asbestos—commercial and residential
- Bullying and harassment
- Confined spaces
- Crane and mobile equipment
- Motion picture and TV
- MSIs
- Oil and gas
- Psychological safety.

OHS GUIDELINES

Apr 15: WorkSafeBC published a series of proposed changes to official guidelines affecting:

- Cranes and hoists training (Part 14 of OHS Reg.)
- Crane operator protection (Part 14)
- Rigging wedge socket connections (Part 15)
- Transportation of Workers (Part 17)
- Oil and Gas ventilation openings standards (Part 23).

OHS INSPECTIONS

Mar 10: WorkSafeBC’s 2021-2023 OHS enforcement plan includes industry “initiatives,” that is, targeted inspections of the following high-risk sectors, hazards and operations:

- Agriculture
- Asbestos (one for commercial and one for residential)
- Bullying, Harassment and Prohibited Action
- Confined Spaces
- Cranes and Mobile Equipment
- Motion Picture and Television
- Marine
- Musculoskeletal Injury
- Occupational Disease
- Oil and Gas
- Process Safety
- Psychological Safety.

PAID SICK LEAVE

Jun 17: Employers can now [apply to](#) WorkSafeBC for reimbursement of COVID paid sick leave. The BC Paid Sick Leave Reimbursement Program covers up to 3 days paid at \$200 per day pay per worker for paid COVID-related work absences from May 20 to December 31, 2021. Unlike in some provinces, paid COVID leave is mandatory in BC.

PLASTIC WASTE

Feb 15: To commemorate Plastic Pollution Awareness Day, 4 BC municipalities—Surrey, Nanaimo, Rossland and Esquimalt—officially adopted bylaws banning single-use plastics. At least 5 other municipalities are considering similar actions.

PPE

Feb 11: WorkSafeBC proposed [changes](#) to OHS guidelines on the standards respiratory protective equipment, both filtered and unfiltered, should be required to meet. Deadline to comment: April 11, 2021.

Apr 11: That’s the deadline to comment on WorkSafeBC proposed [changes](#) to OHS guidelines on the standards respiratory protective equipment, both filtered and unfiltered, should be required to meet.

May 2: A new BC public health order requires workers to wear masks when travelling in work vehicles for work-related activities, unless they’re traveling alone or there’s a physical barrier in place to prevent the spread of droplets between and among other vehicle occupants.

May 18: New BC public health orders require that masks must be worn at all times in fitness facilities, including during workouts.

Jun 2: Requiring workers to remove religious head coverings to don hard hats and other necessary safety PPE has always been a ticklish issue. While safety trumps religious religious rights when it’s a question of one or the other, BC adopted [new OHS rules](#) requiring employers to go to greater lengths before coming to that decision. Specifically, starting Sept. 1, they’ll have to review each area of the job site to determine if a person must wear safety headgear in that particular area. This way, it may

be possible to assign workers with religious objections to headgear to parts of the site where it's not needed rather than forcing them to choose between their religion and their job.

Jun 30: WorkSafeBC issued [new guidelines](#) on requirements for the use of safety headgear with bicycles and skates under Section 8.13 of the OHS Regulation and on [leg protection](#) under Section 8.21(2).

Jul 15: Reminder: [New OHS rules](#) take effect on Sept. 1 requiring employers to review each area of the job site to determine if a person must wear safety headgear in that particular area. This way, it may be possible to assign workers with religious objections to headgear to parts of the site where it's not needed rather than forcing them to choose between their religion and their job.

PRIME CONTRACTORS

Apr 30: Confirming what was already implied, WorkSafeBC stated that employers at construction sites must implement a plan to contain COVID transmission risks and that prime contractors of multi-employer construction sites are responsible for ensuring all of the infection control measures and plans are properly coordinated.

PRIVACY

May 19: The BC Privacy Commissioner [warned](#) that so-called "vaccine passports" allowing people to travel only if they produce proof of

vaccination are potentially privacy-invasive and that governments shouldn't require them unless they can prove:

- They're necessary to achieve a public health purpose, and
- They're effective in meeting that purpose, and
- The privacy risks are proportionate to the purpose and as minimally privacy-invasive as necessary to achieve it.

RETIREMENT AGE

Jan 1: WorkSafeBC proposed [changes](#) to policies for determining a worker's retirement age for purposes of calculating workers comp benefits in accordance with the new Bill 23 rules. Deadline to comment: April 16.

Apr 16: Public consultations are coming to a close on WorkSafeBC proposed [changes](#) to policies for determining a worker's retirement age for purposes of calculating workers comp benefits in accordance with the new Bill 23 rules.

VACCINATION LEAVE

Apr 27: Less than 3 weeks after providing unpaid leave, BC passed [Bill 3](#) providing up to 3 hours of paid leave to get the COVID-19 vaccine during work hours, retroactive to April 19. The full 3 hours of leave can be taken for each vaccine. Although employers can't ask for a doctor's note, they can request "sufficient proof" that the employee is entitled to leave.

WHMIS

Jan 12: Comments closed on WorkSafeBC's newly proposed revisions to its Guidelines under OHS Regulation Part 5, Chemical and Biological Agents, addressing [workplace monitoring methods](#) for determining worker exposure and [acceptable occupational hygiene methods](#).

WHISTLEBLOWERS

Apr 15: Proposed changes to the whistleblower protection law for government workers that took effect in 2019, aka the *Public Interest Disclosure Act*, would give prosecutors up to 2 years rather than the current 6 months to bring a case against a government employer for bringing an illegal reprisal against an employee for reporting wrongdoing.

WORKERS COMP

Nov 13: In response to recent minimum wage increases, WorkSafeBC revised the [Personal Optional Protection insurance coverage amounts for 2021](#). Specifically, the minimum monthly coverage is increasing from \$2,200 to \$2,500 and the maximum monthly coverage is increasing to \$8,333 per month.

Jan 28: WorkSafeBC implemented [revised rules](#) to make it easier for companies to get WCB approval to change their industry classification as a result of changes to their business operations.

Mar 1: WorkSafeBC confirmed that

in 2021 it will continue to waive premiums for employers who are approved to receive the Canada Emergency Wage Subsidy for "furloughed workers," that is, employees on leave with full or partial pay. The agency also published a new [worksheet](#) to help employers calculate how much to exclude from assessable payroll for furloughed workers who were eligible for CEWS subsidy during 2021 claim periods.

May 3: WorkSafeBC launched new consultations on [proposed changes](#) to the workers comp Permanent Disability Evaluation Schedule (PDES) it uses to assess whether a worker is entitled to permanent partial disability benefits. The new proposal, carried out as part of PDES regular 2-year review, includes changes to the Vision Disability section dealing with a condition called photophobia. Deadline to comment: August 6.

Aug 6: That's the deadline to comment on WorkSafeBC's [proposed changes](#) to the workers comp Permanent Disability Evaluation Schedule (PDES) it uses to assess whether a worker is entitled to permanent partial disability benefits. The new proposal, carried out as part of PDES regular 2-year review, includes changes to the Vision Disability section dealing with a condition called photophobia. Deadline to comment: August 6.

WORK REFUSALS

Aug 13: Is the deadline to comment on WorkSafeBC's [proposed changes](#)

to work refusal rules (OHS Regulation, Part 3) that would ban employers from requiring or allowing a worker to perform a task that another worker has refused unless:

- The matter has been resolved, OR
- The employer advises the other worker in writing of: (i) the refusal; (ii) the unsafe condition reported; (iii) the reasons why the task wouldn't create an "undue hazard" to anybody; and (iv) the worker's right to refuse unsafe work.

WORKPLACE VIOLENCE

Mar 4: Second Reading for [Bill 4](#), which would outlaw possessing a firearm or fake firearm in "designated properties," including a child care, court, hospital, post-secondary, public worship, school or other sensitive property listed in the regulations.

CASES

COURT HOLDS CONTRACTOR IN CONTEMPT FOR NOT COMPLYING WITH FALL PROTECTION ORDER

Multiple citations and AMPs weren't enough to get a construction framing contractor to comply with fall protection requirements for workers at risk of falling 10 or more feet. So, WorkSafeBC got a court order requiring the contractor to stop violating the OHS rules. When inspectors found further violations at other sites in which the contractor was working, the agency asked the court to find the contractor in contempt. The BC court agreed. The contractor admitted to the new violations but contended they were only minor and quickly corrected. But the court didn't buy it. The key wasn't the severity of the violations but the contractor's failure to make a good faith attempt to comply with the order. Based on the contractor's

record, the court concluded that the contractor knew it was cutting corners and just hoping it didn't get caught. So, now it would have to pay damages for contempt of court [[Workers' Compensation Board v G & D Construction Ltd.](#), 2020 BCSC 1770 (CanLII), November 19, 2020].

EMPLOYEE CALLED "HONEY" BY HER CO-WORKER HAS A CASE FOR SEX HARASSMENT

Whether the hair salon stared at his co-worker's buttocks wasn't clear. But one thing was: he repeatedly called her "honey" and "sweetie." And that coupled with the other allegations was enough for the BC Human Rights Tribunal to nix the employer's motion to dismiss and allow the employee to go forward with her discrimination complaint against the salon owner for failing to protect her from sexual harassment

[\[Hollett v. Valentina's Hair Studio and another \(No. 2\), 2020 BCHRT 189 \(CanLII\), October 30, 2020\]](#).

PERIODIC MEDICAL CERTIFICATION OF WORKERS USING RESPIRATORS IS OVERKILL

Under OHS regulations, employers must ensure that workers who have to use respirators are examined by a physician to verify their medical fitness to do so at least once a year. An electrochemical company wanted to go further and require workers to complete medical assessment questionnaires and undergo certification review by a medical professional periodically during the year. The union grieved and the case went to binding mediation. The BC mediator agreed that while the safety objective was legitimate, the program requirements were overkill. Resolution: The employer should drop its questionnaire and certification requirements except in cases where annual medical screening and fit testing indicates they're necessary to monitor a specific medical situation. And in that situation, the employer should pay workers 2 hours pay for attending the certification exam [[Unifor Local 697 v Chemtrade Electrochem Inc.](#), 2020 CanLII 91859 (BC LA), November 10, 2020].

FOOD PLANT FINED NEARLY \$98,000 FOR WORKER'S MACHINE INJURY

A worker cleaning a machine suffered serious injuries after getting

his hand caught in its rotating piece. WorkSafeBC inspectors found that there had been a guard in place but that somebody removed it to make it easier to clean the machine. To make matters worse, the machine was new and the victim didn't receive training on how to use it safely. Result: The employer was hit with a \$97,847 penalty for 2 OHS violations [[Punjab Milk Foods](#), May 15, 2020].

CONTRACTOR FINED \$97,956 FOR FAILING TO INSPECT WORK SITE FOR HAZARDOUS MATERIALS

Failing to have a competent person inspect the site and perform a hazardous materials survey before beginning post-fire renovation activities was the offence committed by a restoration contractor. In addition to being high-risk, it was a repeat violation resulting in a large penalty of \$97,956 [[FirstOnSite Restoration Ltd.](#), July 31, 2020].

HYDROGEN SULFIDE EXPLOSION BURNS PRIME CONTRACTOR TO THE TUNE OF \$88,149

A subcontractor using a vacuum truck to clean hydrogen sulfide (H₂S) from a pressure separator at a natural gas well site committed 3 big mistakes, including failing to: i. bond and ground the truck; ii. notice that concentration of highly flammable H₂S was 50% above safe limits; and iii. follow safe work and permitting procedures for the operation. The resulting explosion seriously injured 2 workers and led to a fine of

\$88,149 against the site prime contractor [*Kelt Exploration (LNG) Ltd.*, July 16, 2020].

TOP COURT UPHOLDS PERMANENT BAN ON ASBESTOS FIRM FOR DEFYING OHS ORDERS

For 8 years, the WCB waged litigation war to compel an asbestos abatement firm to comply with OHS asbestos rules, culminating in a 2019 ruling permanently banning the firm and its owner from operating in the province. Now, in what appears to be the final chapter, the BC Court of Appeal has upheld all of the bans. The only thing the judge got wrong in this complex case, the high court found, was in calculating the legal costs each party owed to the other [*Workers' Compensation Board of British Columbia v. Seattle Environmental Consulting Ltd.*, 2020 BCCA 365 (CanLII), December 17, 2020].

NEAR MISS IS JUSTIFICATION FOR POST-INCIDENT DRUG TESTING

After a Self-Propelled Modular Transporter (SPMT) collided with a set of scaffold stairs erected at the end of the dock against a barge, the manager at the site ordered the worker serving as spotter to undergo drug/alcohol testing. The union claimed that the incident wasn't a "Significant Event" justifying post-incident testing under the employer's testing policy because there were no injuries and only minimal property damage. But the

BC arbitrator disagreed, finding that a near miss did, in fact, meet the policy definition of "Significant Event"—and rightly so, given the serious potential for significant injury and damage. Other key factors for rejecting the grievance: The manager followed the correct investigation procedures and SPMT crashes are rare events supporting the suspicion of impairment [*Vancouver Shipyards Co. Ltd v Marine and Shipbuilders*, Local 506, 2020 CanLII 103785 (BC LA), December 29, 2020].

WORKSAFEBC JUMPS THE GUN IN CITING EMPLOYER FOR REPEAT VIOLATION

Less than a year after issuing a warning, WorkSafeBC inspectors cite an elevator plant for OHS lockout violations. A few months after, while still deciding how big the Administrative Monetary Penalty should be, inspectors find yet another high risk lockout violation. The AMP bill: \$75,000 for the second violation and \$150,000 for the third, which WorkSafeBC labeled as a repeat offence. On appeal, the WCAT cut the \$75,000 AMP to \$15,000 but left the \$150,000 AMP for a repeat offence intact. The plant says the WCAT messed up and the BC court agrees. It was all about timing. Under the OHS laws, repeat penalties are intended for offences committed within 14 days of previous penalties. But WorkSafeBC issued the repeat AMP before figuring out how big the first AMP should be. Later, when it settled on \$75,000, it just doubled the amount for the repeat violation. But in so doing, it

defeated the law's policy that persons who get fined should get the chance to fix the problem before being hit with a repeat violation. The WCAT should have caught that and vacated the repeat AMP, the court ruled [[Richmond Elevator Maintenance Ltd. v British Columbia \(Worker's Compensation Appeal Tribunal\)](#)], 2021 BCSC 91 (CanLII), January 21, 2021].

REPEAT DISTRACTED DRIVING OFFENCES ARE JUST CAUSE TO TERMINATE TRUCKER

A driver complaining that the warning lights of his vehicle were sending out false alarms and misinformation used his cell phone to snap off a picture of the dashboard to document his concern. The problem is that the photos also clearly showed that the vehicle was moving. "All I did was press a button," the driver protested when scolded for violating the company's distracted driving policy. But this was anything but a first offence. And given the driver's history of progressive discipline for safety and distracted driving violations, this turned out to be the final straw that got him fired. The union grieved but the BC arbitrator ruled that the company had just cause to terminate [[Sysco Canada, Inc. v Teamsters Local Union No. 213](#)], 2021 BCLRB 4.

WORKER COMPLAINING OF HARASSMENT GOT A FAIR INVESTIGATION

After an internal investigation found no evidence that a Pizza Hut supervisor committed bullying and harassment, the worker complained to WorkSafeBC. The agency reached the same conclusion and tossed the OHS complaint. The worker claimed the OHS investigation wasn't just wrong but downright unfair in, among other things, ignoring closed circuit TV footage of the incident. But the BC court rejected the appeal. The CCTV footage didn't prove anything because it had no audio. And there was no evidence that the investigator cut corners or ignored any other evidence showing that harassment occurred [[Ahluwalia v British Columbia \(Workers' Compensation Board\)](#)], 2021 BCSC 399 (CanLII), March 9, 2021].

t's on the environmental side but its the largest fisheries fine in Canadian history: <https://www.castanet.net/news/BC/329181/Coal-company-Teck-fined-60-million-for-contaminating-B-C-rivers#329181>

FOOD PROCESSOR FINED \$138,000 FOR MACHINE GUARDING AND LOCKOUT VIOLATIONS

After sliding open a food slicing machine access door and reach inside to clear a jam, a worker cut his hand on the cutting blade. The employer was fined \$138,638 for doing 2 things wrong: i. Not ensuring

the machine was de-energized and locked out; and ii. Allowing the door interlock safeguard to be bypassed [*Neptune Fresh Produce Inc.*].

FAULTY LOCKOUT PROCEDURES COST FRACKING FIRM \$137,000

The firm did have written lockout procedures, but they weren't specific to the equipment as the regulations require. They also didn't require 2 workers to lock out the energy-isolating devices independently. Throw in a repeated violation for failure to provide adequate training, supervision and instruction, and the end result was a fine of \$137,217 [*Step Energy Services Ltd.*].

WORKER GETS 10-DAY SUSPENSION FOR ILL-ADVISED COVID PRANK

An apprentice gardener just returning to work after a 2-week COVID absence thought it would be funny to prank a co-worker by waving him down, getting him to open his car window and then coughing into the car without covering his mouth. Unfortunately, his bosses didn't get the joke and suspended him without pay for 10 days for violating a company COVID safety rule. The union conceded that some kind of discipline was in order but claimed that a 10-day suspension was excessive, especially since the apprentice didn't mean any harm and really thought he was free of COVID after serving his isolation. But the BC arbitrator

sided with the employer. Yeah, there were some mitigating factors, like the apprentice's long discipline-free record, but what he did was foolish, deliberate and reckless, not to mention very distressing to the coughed-on co-worker [[Board of Education of School District No. 39 \(Vancouver\) v Canadian Union of Public Employees, Local 407 \(Markus Linde - Discipline\)](#), 2021 CanLII 43175 (BC LA), May 10, 2021].

ROOFER FINED \$105,252 FOR FALL PROTECTION VIOLATION

WorkSafeBC inspectors noticed 2 workers performing waterproofing work while standing on a narrow temporary work platform at an elevation of about 4 m (13 ft.) without using personal fall protection. As a result, they hit the employer with a fine of \$105,252 for a repeat and high-risk violation [*Villa Roofing & Sheet Metal Ltd.*].

OHS FORKLIFT TRAINING RULES DON'T BAN HIRING NOW AND TRAINING LATER

A sawmill employee was passed over for promotion to a forklift operator's position in favour of a co-worker with less seniority. The employer's reason: The senior employee didn't have the CSA forklift operator training required by Section 16.7 of the OHS Regulations. The union cried foul, noting that the senior employee had forklift operating experience and could have completed the necessary CSA training during the job's 15-day trial period. The BC Labour Relations

Board agreed and upheld the grievance. The Regulations don't ban selecting workers without the required training for such a position and providing the training before letting them actually operate the forklift [[West Fraser Sawmills Ltd. \(Fraser Lake Sawmills Division\) v United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-2017](#), 2021 BCLRB 96 (CanLII), June 4, 2021].

SUPERVISOR MUST PAY DISCRIMINATION DAMAGES FOR SEXUAL ASSAULT OF WORKER

A supervisor in charge of a carpet installation operation on a cruise ship sexually assaulted a male member of his team while in his bunk. The worker quit and sued the company and supervisor for sex discrimination. After apparently settling with the company, the worker won a \$33,300 damage award against the supervisor, including \$8,300 in lost wages and \$25,000 for injury to dignity, feelings and self-respect. The assault was sexual in nature, unwelcome and had a negative impact on the worker's employment, the BC Human Rights Tribunal concluded [[Ban v. MacMillan](#), 2021 BCHRT 74 (CanLII), June 3, 2021] **[Editor's Note: While \$33,300 may not sound like much for sexual assault, keep in mind that the discrimination damages are in addition to the supervisor's potential criminal liability and liability for civil assault.]**

OK TO FIRE UNION REP FOR SAFETY AND HARASSMENT VIOLATIONS

Firing an OHS coordinator is tricky business, especially when the coordinator also happens to be the workplace union rep. The starting point in a legal proceeding involving discipline of a union rep is that the employer acted with "anti-union animus." But the employer in this case was able to rebut the presumption and defeat the grievance by showing that the coordinator was already on "the cusp" of termination for an extensive disciplinary record, including discipline for not completing work logs, safety infractions and violations of the company's anti-bullying and harassment policy [[RMC Ready-Mix Ltd. v Teamsters Local Union No. 213](#), 2021 BCLRB 99 (CanLII), June 4, 2021].

MANITOBA

LAWS & ANNOUNCEMENTS

CLIMATE CHANGE

Jan 1: Effective today, gasoline in Manitoba must contain at least 9.25%, up from 8.5% required in 2020. On January 1, 2022, the ethanol content requirement will increase again to 10%. Stricter penalties for violations of biodiesel content requirements also took effect.

COMMERCIAL VEHICLES

Mar 10: Manitoba released a [report](#) summarizing the public feedback from recent consultations on installing electronic logging devices (ELDs) in commercial vehicles. In 2019, Transport Canada revised federal *Commercial Vehicle Drivers Hours of Services* regulations to require installation of ELDs in commercial vehicles operating across provincial/territorial boundaries. The recent consultations would add the same requirement for commercial vehicles that travel solely within Manitoba, which are subject to provincial rather than federal regulation.

COVID-19 ENFORCEMENT

Nov 20: Manitoba is in the Critical level (red) and public health inspectors are cracking down on

businesses that don't comply with COVID restrictions. The province will invest \$2.5 million to hire 275 new public health inspectors to enforce COVID restrictions. On October 23, new regulations took effect giving municipalities authority to issue tickets carrying fines of \$1,296 against individuals and \$5,000 against corporations for social distancing, face mask and other COVID violations. So, far over 300 warnings and 200 tickets have been issued.

Dec 15: Manitoba has dished out 497 tickets imposing over \$761,000 in fines to businesses and individuals for violating COVID public health orders since enforcement began in April. In the second week of December, enforcement officers issued \$5,000 tickets to 7 different businesses for various violations.

Jan 19: During the week of Jan. 11 to 17, 2021, Manitoba public health inspectors issued 183 warnings and 77 tickets. Of the 66 \$1,296 tickets handed out, 45 were for violations of limitations on gatherings in private residences and outdoors, including 9 tickets to persons participating in a protest rally at Bell MTS Place before a Winnipeg Jets hockey game.

Feb 9: Since enforcement began last April, Manitoba has issued 938 tickets and imposed over \$1.3 million in fines. During the week of February 1 to 7, 2021, public health inspectors handed out 99 warnings and 31 tickets, including 6 tickets to individuals for not wearing a mask in an indoor public place and 25 for violations of limits on gatherings in private residences or outdoors. In addition, one business was fined \$5,000 for a COVID violation.

Mar 9: Between March 1 and 7, Manitoba issued 89 warnings (almost 50% fewer than the previous week) and 15 tickets for violating COVID public health restrictions, including one \$5,000 fine against a business. Since enforcement efforts began in April 2020, a total of 3,391 warnings and 1,028 tickets have been issued, resulting in over \$1.4 million in fines to businesses and individuals.

May 4: From April 26 to May 2, Manitoba issued 112 warnings and 58 total tickets for violating COVID public health restrictions, including 42 \$1,296 tickets against individuals and 12 \$298 mask violation tickets. Since enforcement efforts began in April 2020, a total of 4,008 warnings and 1,294 tickets have been issued, resulting in over \$1.8 million in fines against businesses and individuals.

Jun 7: From May 31 to June 6, Manitoba issued 219 warnings and 131 tickets for violating COVID public health restrictions, including 124 \$1,296 tickets against individuals and one \$5,000 ticket against a business. Since

enforcement efforts began in April 2020, a total of 4,727 warnings and 1,812 tickets have been issued, resulting in over \$2.4 million in fines against businesses and individuals.

Jul 6: From June 28 to July 4, Manitoba issued 58 warnings and 24 tickets for violating COVID public health restrictions, including 22 \$1,296 tickets against individuals and one \$5,000 ticket against a business. Since enforcement efforts began in April 2020, a total of 5,030 warnings and 2,040 tickets have been issued, resulting in almost \$2.8 million in fines against businesses and individuals.

COVID-19 LEAVE

Nov 1: Manitoba passed Bill 44 to expand grounds for public health emergency leave to employees who aren't actually infected with the virus but have underlying medical conditions making them more susceptible to infection, retroactive to September 27, 2020. Employees may also take unpaid leave if they contract another illness or are undergoing medical treatment.

COVID-19 RESPONSE

Feb 12: As cases trend down, Manitoba loosened public health restrictions. Over the next 3 weeks:

- Restaurants, gyms, fitness centres, indoor sporting facilities, museums, art galleries, personal service businesses and yoga studios can reopen at 25% capacity

- Regular religious services can resume at 10% capacity or 50 people, whichever is lower
- Weddings can resume at a limit of 10 people plus the officiant and photographer.

Mar 12: Changes to public restrictions in effect through March 25:

- Retail stores, malls and personal services increased to 50% capacity or 250 people, whichever is lower
- Restaurants and licensed premises increased to 50% with requirement for tables to sit with only household members
- Outdoor dining on patios and licensed premises allowed for groups of up to 6 people from different households
- Gathering limits at outdoor public or private places increased to 10 people
- Gathering limits for places of worship up to 25% capacity or 100 people.

Apr 28: In response to the latest wave of COVID cases, Manitoba implemented new public health restrictions that will remain in effect until May 26:

- Ban on visitors to private households, either indoors or outdoors
- Ban on indoor gatherings and 10-person limit on outdoor gatherings
- Patio dining restricted to groups of 4 people only
- Mandatory closure of food courts in malls and shopping centres

- Gyms and fitness centres remain limited to 25% capacity
- Stores limited to 25% capacity or 250 patrons, whichever is lower.

Jun 8: Manitoba became one of the first jurisdictions to implement vaccination passports in the form of immunization cards entitling the holder to travel without having to self-isolate for 14 days after returning. To qualify for the card, the person must:

- Have a Manitoba health card
- Be fully immunized, that is, have received 2 doses of a COVID vaccine
- Wait 14 days after getting the second dose, to give it time to take full effect.

Jun 26: Manitoba loosened its COVID restrictions. Highlights:

- Limit on outdoor gatherings goes from 5 to 10 persons
- Public outdoor gatherings up to 25
- Retail can reopen at 25% capacity subject to limit of 250 persons
- Personal services business can reopen at 50% capacity but by appointment only
- Restaurants and bars can reopen at 25% capacity indoors and 50% outdoors.

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COVID-19 RESTRICTIONS

Nov 20: A week after moving to Critical level (red), Manitoba adopted further COVID restrictions, including a 5-person limit on indoor or outdoor gatherings in a public place. Retail businesses can remain open but may sell only essential items in person and limit capacity to 25% or 250 people, whichever is lower.

COVID-19 TESTING

Apr 19: Manitoba became the latest province to launch a program offering free rapid COVID-19 antigen tests to employers who want to implement onsite workplace screening programs. The new initiative is based on the current Fast Pass testing program in place for teachers and education workers and personal care home staff.

MSIs

Jun 15: Manitoba officially launched its MSI Prevention Strategy to reduce the number of workplace musculoskeletal injuries over the next 4 years. The initiative features not just inspection and enforcement but also education, outreach and research.

OHS ENFORCEMENT

Mar 1: Since April 1, 2020, Manitoba has carried out 5,058 WSH inspections resulting in 6,121 improvement orders and 372 stop work orders issued. Surprisingly, while COVID drove a massive increase in work refusals across much of the country, Manitoba

reports having investigated only 19 work refusals during the year.

Jul 1: In the second quarter of 2021 (between April 1 and June 27), WSH performed 1,740 inspections and issued 2,401 improvement and 161 work orders. There were also 3 reported work refusals and 4 alleged reprisals.

OHS PENALTIES

Apr 13: The Assembly is now just one vote away from passing [Bill 11](#), which would double the maximum fines for *Workplace Safety and Health Act* violations: (i) First offence: \$500,000 + \$50,000 per day for each day offence continues; and (ii) Second and subsequent offence: \$1,000,000 + \$100,000 per day for each day offence continues.

May 20: The Assembly passed [Bill 11](#), which doubles the maximum fines for *Workplace Safety and Health Act* violations: (i) First offence: \$500,000 + \$50,000 per day for each day offence continues; and (ii) Second and subsequent offence: \$1,000,000 + \$100,000 per day for each day offence continues.

OHS REFORM

May 20: Highlights of the *Workplace Safety and Health Act* changes contained in newly passed [Bill 11](#):

- Maximum fines doubled to \$500,000 for first offence and \$1 million for second and subsequent offences
- Chief Prevention Officer eliminated

- Six-month limit to file a reprisal complaint (previously called “discrimination action”) and ban on appeal of “frivolous” or “vexatious” complaints.

- It’s necessary to achieve a public health purpose, and
- It’s effective in meeting that purpose, and
- The privacy intrusion is the minimum necessary to achieve the purpose.

PPE

Nov 17: Newly tabled Private Member Bill 210 would require the Manitoba government to give the Assembly an annual report setting out the quantity and expiry dates of PPE purchased and held by provincial health authorities.

Jan 6: A new agreement between the government and the Manitoba Nurses Union and Shared Health requires hospitals, personal care homes, home care providers, health care regions and other home care operations to ensure workers at high risk of COVID have access to an N95 respirator. It also gives staff in these high-risk settings the choice to continue wearing a procedure mask. As before, employers must ensure that workers required to wear N95 respirators undergo fit testing. .

PRIVACY

May 19: The Privacy Commissioners of Manitoba and New Brunswick issued a [joint statement](#) to caution governments against the potential privacy implications of “vaccine passports.” Requiring people to produce proof of their COVID vaccination status to travel or go to restaurants and other public places “is an encroachment on civil liberties” that governments should undertake only after determining that:

SICK LEAVE GRANTS

May 7: The new Manitoba Pandemic Sick Leave program will pay employers up to \$600 per employee for up to 5 full days of paid sick leave, which need not be taken consecutively, for missed work due to vaccination, self-isolation and other COVID-related reasons. Employers that currently provide paid sick leave to employees wouldn’t be eligible.

May 14: Employers can now [apply](#) for government reimbursement for paid sick leave under the new Manitoba Pandemic Sick Leave program. Eligible employers can get up to \$600 per employee for up to 5 full days of paid sick leave, which need not be taken consecutively, for missed work due to vaccination, self-isolation and other COVID-related reasons. Employers that currently provide paid sick leave to employees aren’t eligible for reimbursement. Eligibility runs from May 7 to Sept. 25, 2021.

TRUCKING GRANTS

Feb 5: Applications began for [Manitoba Efficient Trucking Program](#) grants providing rebates on retrofits to make heavy-duty vehicles and trailers more energy efficient and reduce their greenhouse gas

emissions. Companies can apply for a maximum rebate of \$20,000 per truck and/or trailer covering 50% on fuel-saving and emissions-reducing devices. Deadline: March 31, 2021.

VACCINATION LEAVE

May 12: Manitoba became the most recent province to give employees up to 3 hours' paid leave to get a dose of the COVID vaccine, 6 hours in total. As in the other paid vaccination leave provinces, employees must give as much advance notice as reasonable and the employer may request verification of eligibility for leave but can't require a medical certificate. Unlike paid sick leave, employers can't get government reimbursement for vaccination leave.

WAGE SUPPORTS

Jun 24: The province announced that it's launching a new Healthy Hire Manitoba Program offering Manitoba-based businesses, not-for-profits and registered charities up to \$50,000 covering 50% of the wages of up to 10 new employees who attest that they have been or soon will be vaccinated. The support covers full pay period for employees hired on or after June 10, 2021, with the last pay period ending October 15.

WORK INJURIES

May 11: The long-term decline in work injuries continued in 2020 but was offset by COVID-related claims. Time loss injury rate of 2.5 per 100 workers was the same as in 2019,

but would have actually been 2.3 if COVID claims were excluded. Here are the other statistical highlights of the [WCB 2020 Annual Report](#):

- Days lost to injury/illness per full time worker: 1.64 (vs. 1.50 in 2019)
- Total injury claims: 22,645 (27,495)
- Time loss injury claims: 12,044 (12,755)
- Severe injuries: 2,361 (2,413)
- Fatality claims: 14 (19)
- Average days paid for all wage loss claims: 34.3 (30.1).

WORKERS COMP

Nov 27: The Manitoba WCB officially removed the following previously rescinded policies from its Policy Manual:

- Policy 35.40.05, Interest Rates under Regulation (information Only)
- Policy 43.20.40.01, Relocation
- Policy 44.80.30.10.10, Post-Accident Earnings - Collateral Benefits (Allowable Employer Top-Up)
- Policy 44.80.30.10.20, Post-Accident Earnings - Collateral Benefits (Unallowable Employer Top-Up)
- Policy 44.80.30.35.01, Declared Workers – Long-Term Loss of Earning Capacity.

Feb 10: The WCB reminded all employers to pay their 2021 workers comp premiums by the February 28 deadline. Be sure your payroll calculations include the earnings of

any uncovered individuals or independent businesses you hire that don't have workers comp coverage, the agency stressed.

Apr 13: Workers comp reform legislation ([Bill 18](#)) is out of Committee and ready for a final vote. Key changes:

- Definition of “accident” to include occupational diseases, PTSD and acute reactions to traumatic events
- WCB may no longer create new employer classes
- Maximum annual earnings for compensation calculations set at \$150,000
- New prevention advisory council to be created by WCB
- Ban on employer deduction of employee benefits to pay for employee's compensation claim
- Penalties for late payments of annual assessments.

Apr 22: If you followed workers comp payroll reporting rules last year, you may be getting a cheque from the WCB. That's because for the third year in a row, the WCB is distributing surplus funds to employers. This year's surplus is particularly significant—40% of 2020 premiums—given how COVID-19 reduced work injury rates by forcing so many workers to stay home last year.

May 18: The WCB accepted 1,280 and rejected 844 COVID-related injury claims in FY 2020, with 25 claims still pending. Claims accepted by industry segment:

- Healthcare: 941

- Public administration: 170
- Service: 58
- Construction: 34
- Manufacturing: 32
- Transportation: 27
- Trade: 14
- Others: 4.

May 18: The WCB made minor changes to a pair of policies, including:

- [Policy 44.80.30.20](#), Post-Accident Earnings—Deemed Earning Capacity to reflect 2020 Labour Force Survey estimates for minimum weeks of job search under Schedule A
- [Policy 21.10.40](#), Expenses for Attendance at Appeal Hearings to reflect recent increases in meal and travel allowances.

May 20: Workers comp reform legislation ([Bill 18](#)) officially passed. Key changes:

- Definition of “accident” to include occupational diseases, PTSD and acute reactions to traumatic events
- WCB may no longer create new employer classes
- Maximum annual earnings for compensation calculations set at \$150,000
- New prevention advisory council to be created by WCB
- Ban on employer deduction of employee benefits to pay for employee's compensation claim
- Penalties for late payments of annual assessments.

WORKPLACE HARASSMENT

Nov 3: Proposed new legislation requires all Manitoba municipal councils to pass a Code of Conduct bylaw and require all council members to complete online harassment, sexual harassment and bullying training online by May 21, 2021. It also establishes standard procedures for reviewing municipal code of conduct complaints against council members.

CASES

PRINTING COMPANY FINED \$32,500 FOR MACHINE GUARDING VIOLATION

A worker making adjustments to a corner cutting machine for laminated boards cut his hand on the blade and suffered serious injuries. The employer was fined \$32,500 for one WSH violation, presumably failure to ensure that the blade was properly guarded [*Friesens Corporation*, [Government News Release](#), November 20, 2020].

EMPLOYER FINED \$60,000 FOR WORKER'S FATAL FALL

A worker lost his life after falling 54 feet from the top of a flour bin opening he was attempting to cover. The employer, a welding and fabrication company, was fined \$52,000 for an OHS violation and another \$8,000 to be used for

workplace health and safety education [*Cobalt Industries Ltd.*, [Government News Release](#), October 27, 2020].

BOOK PRINTER FINED \$32,500 FOR WORKER'S MACHINE INJURY

Canada's largest printer of hardcover books pleaded guilty to one OHS violation resulting in a fine of \$25,000 and \$7,500 in court costs stemming from an incident in which a worker making adjustments to a cutting machine made contact with the cutting blade [*Friesens Corporation*].

SINCERE BUT UNREASONABLE FEARS NOT GROUNDS FOR MENTAL STRESS BENEFITS

A truck driver who also happened to be a licensed blaster alerted supervisors after spotting what he was convinced were highly dangerous work practices inside an area that contained undetonated explosives (a misfire) at a dam site, insisting they evacuate the area immediately. But the work continued and the supervisors reassured him that his concerns were misplaced. The Manitoba WSH inspector who responded to the driver's frantic call reached the same conclusion. All the driver got for his troubles was a 4-day suspension when the video he took to show how dangerous the situation was caught him driving while using an electronic device. The driver claimed retaliation as well as workers comp benefits for the post traumatic stress disorder he said he suffered as a result of the events. But the WCB nixed the claim after finding that the driver didn't experience a "traumatic event" because his intense safety fear, while sincere, weren't objectively reasonable. The Manitoba high court found that this was a reasonable decision and refused to overturn it [[Inkster v The Workers Compensation Board of Manitoba et al](#), 2021 MBCA 14 (CanLII), February 22, 2021].

NEW BRUNSWICK

LAWS & ANNOUNCEMENTS

AMPs

Jun 1: WorkSafeNB can now issue Administrative Monetary Penalties for not just COVID but any kind of OHS violations. Amounts (first/second/third and subsequent offence):

- Employers and Contractors: \$500/\$1,000/\$2,000
- Supervisors and Owners: \$250/\$500/\$1,000
- Employees: \$100/\$200/\$500.

BORDER RESTRICTIONS

Apr 25: New orders require all business travelers and persons returning to New Brunswick from non-essential travel (or moving to the province) to self-isolate in a designated isolation hotel for 7 days at their own expense. They must then be tested on day 5; if they test negative (results will be reported on day 7), they can complete the remaining 7 days of self-isolation at home, as long as there are no other people in the household. The order doesn't apply to rotational workers, truck drivers or regular cross-border commuters.

CLIMATE CHANGE

Nov 23: New Brunswick proposed

new regulations to implement its output-based pricing system requiring large industrial emitters to cut their greenhouse gas emissions by 10% by 2030. The rules would take effect retroactively to January 1, 2020. New Brunswick is one of several provinces that have established their own output-based pricing systems rather than go with the federal model. The others include Saskatchewan, Alberta and Newfoundland.

Apr 27: The federal government approved New Brunswick's provincial output-based pricing system for large emitters of greenhouse gas emissions, retroactive to January 1, 2021.

Jun 16: New Brunswick announced that it will seek an equivalency agreement with the federal government that would allow the coal-driven Belledune Generating Station to continue operating at a reduced capacity to the end of its scheduled operating life. Such an agreement would enable the province to continue along the path of meeting its GHG reduction targets for 2030 and 2050, the province claims.

CONSTRUCTION

May 6: New Brunswick granted a grace period to give the construction industry extra time to transition from the 2010 to 2015 version of the National Building Code. **Result:** The government will accept building permits under either version through December 31, 2021. But starting the first day of the new year, only permits based on the 2015 National Building Code will be accepted.

COVID-19 ENFORCEMENT

Jan 16: New Brunswick health and enforcement inspectors visited 172 business sites this week. Findings: 99.4% of all patrons were wearing masks, but only 88.9% of employees were. Employers at those sites received warnings and now face the risk of shutdown orders and fines of up to \$10,000 if they don't pass follow-up inspection.

Apr 14: With cases rising and new variants popping up, WorkSafeNB reminded employers who are still up and running of their obligation to implement a COVID infection control plan, train staff how to follow it and continually adjust it to keep up with [changes to public health guidelines](#) and orders.

COVID-19 RESPONSE

Feb 2: New Brunswick's COVID situation remains dire. And now comes more bad news: the government has confirmed 3 new cases of the deadly new U.K. variant. Meanwhile, lockdown orders also remain in effect across most of

the province.

Mar 7: New Brunswick carefully moved to level Yellow in its re-opening plan. Highlights:

- Residents may expand their list of steady contacts with whom they can dine out and go out in public from 10 to 15
- Indoor gatherings allowed at up to 50% of venue capacity
- Outdoor gatherings allowed for up to 50 people
- Sports teams may play within leagues across zones.

Jun 7: New guidelines came into effect as New Brunswick entered the first phase of its reopening plan:

- No isolation or testing required for travelers from Atlantic Canada (other than Nova Scotia) and the Avignon and Témiscouata regions of Québec
- Cross border commuters and truck drivers no longer subject to testing and isolation requirements
- Contact with all family and friends permitted.

COVID-19 SCREENING

May 31: Effective today, unvaccinated long-term care must undergo rapid testing every other day if they work in a facility where less than 50% of the staff has received at least one dose of the COVID vaccine.

FACE MASKS

Oct 27: The New Brunswick Human Rights Commission said that the

province's new mandatory masks order is "reasonable and balanced." Facing new COVID outbreaks in the Moncton and Campbellton regions, the province made it mandatory to wear face masks or coverings in most indoor places on October 8. The Commission notes that the order leaves room for exemptions to accommodate age and disabilities which make mask wearing difficult or dangerous.

FALL PROTECTION

Jul 8: WorkSafeNB launched a new inspection blitz targeting compliance with OHS fall protection requirements, specifically:

- Use, care and maintenance of fall protection equipment
- Supervisor competency
- Worker fall protection training.

FARM WORKERS

Mar 15: New rules require temporary foreign workers coming to New Brunswick to quarantine in individual accommodations for 14 days upon arrivals; under previous rules, workers were allowed to quarantine together on farms as long as they maintained social distancing. Farm groups are unhappy with the new restrictions and claim they'll increase costs ahead of the growing together. Nova Scotia is allowing workers to quarantine together on farms; Prince Edward Island is following the same rules as New Brunswick but is also paying the costs of individual quarantine.

FIRST AID

Jan 29: Intermediate Training provided in accordance with CSA Z1210-17, *First Aid Training in the Workplace* does, in fact, meet the requirements of a Schedule B Workplace Standard First Aid Course under the OHS regulations. So states a new [interpretation letter](#) from WorkSafeNB.

INCIDENT REPORTING

Jan 4: WorkSafeNB updated its [Sample Incident Reporting Procedure](#) to incorporate recent legislative and policy changes. The Sample is designed to help employers comply with OHS and workers comp incident reporting rules.

LOGGING SAFETY

Nov 27: A panel reviewing the coroner's report after an inquest to a logger's death recommended the following changes to improve the safety of workers in logging operations:

- Require employers to provide logging teams with appropriate means of communication located directly on the site
- Require employers to review workers' safety training annually and keep a training log
- Require WorkSafeNB to perform inspections of all small businesses with fewer than 20 employees at fixed, regular intervals
- Revise the definition of

“working alone” in the OHS regulations to significantly reduce emergency response time.

OFF-ROAD VEHICLES

Jan 1: New safety rules for off-road vehicles took effect:

- Mandatory use of seatbelts (if vehicle is equipped with them)
- Off-road vehicles allowed to operate within 7.5 metres of travelled portion of a highway on private property to clear snow or do yard maintenance
- New offence to operate vehicle other than an ATV on a managed ATV trail
- Fine for using managed snowmobile or ATV trail without a permit doubled to \$280.

OHS GUIDELINES

Mar 11: The *OHS Act* defines an “employee” covered by the law as “(a) a person employed at or in a place of employment, or (b) a person employed at or in a place of employment for any purpose in connection therewith.” A new WorkSafeNB [interpretation letter](#) clarifies that part (b) of the definition means that individuals not in traditional employment relationships may be considered “employees” if they’re doing work at the site.

Examples: Volunteers, the self-employed and workers of other employers such as delivery personnel or workers hired by outside contractors. The definition doesn’t cover customers, patients and other individuals who are the

site but not doing work. Students aren’t deemed “employees” of their schools, the guidance also confirms.

PPE

Nov 20: Are workers allowed to wear protective headwear backwards or over a ball cap? **Answer:** Yes, according to new [guidance](#) from WorkSafeNB, as long as the headwear meets and is used in accordance CSA Z94.1-15 or equivalent standards. And under CSA Z94.1-15, headwear must be worn facing forward except when the job, task or work environment requires wearing it backward—for example, to accommodate other PPE like welding helmets or face shields, or to improve visibility. But it’s up to employers to confirm that the headwear’s manufacturer allows it to be worn backward.

Feb 9: New WorkSafeNB [OHS guidance](#) clarifies that protective clothing employers must furnish to workers involved in wildland fire operations depends on the hazards to which they’re exposed. Do a risk assessment and determine if your organization must meet NFPA 1977, *Standard on Protective Clothing and Equipment for Wildland Fire Fighting*, the interpretation letter advises, including with regard to footwear, face/neck shrouds, goggles and chain saw protectors.

PRIVACY

May 19: The Privacy Commissioners of New Brunswick and Manitoba issued a [joint statement](#) to caution governments against the potential

privacy implications of “vaccine passports.” Requiring people to produce proof of their COVID vaccination status to travel or go to restaurants and other public places “is an encroachment on civil liberties” that governments should undertake only after determining that:

- It’s necessary to achieve a public health purpose, and
- It’s effective in meeting that purpose, and
- The privacy intrusion is the minimum necessary to achieve the purpose.

SAWMILL SAFETY

Jul 8: The jury in a coroner’s inquest into the death of a sawmill worker issued recommendations for improving sawmill safety:

- More clarity on roles and responsibilities for equipment start up and shut down
- Establish clear handoff procedures between production and maintenance mode when equipment is shut down or locked out
- Observations and audits to ensure employees are still proficient and following their training
- Use of mock drills to enhance emergency response plans.

TRAFFIC SAFETY

Jan 1: Changes to the *Motor Vehicle Act* are now in effect:

- Fine for distracted driving doubled to \$280 and demerit points increased to 5
- Fine for passing school bus while its flashing red lights are

- on doubled to \$480 and demerit points increased to 6
- Move Over, Slow Down rules extended to tow trucks, highway maintenance vehicles and private and public utility vehicles that have their flashing lights engaged
- Maximum speed for Move Over, Slow Down set at half the posted speed limit.

TRAINING

May 4: Under new legislation, bartenders and liquor servers will have to complete an [online training course](#) on responsible practices created by the Tourism Industry Association of New Brunswick, starting on September 1, 2021.

Sept 1: That’s the deadline for bartenders and liquor servers to complete an [online training course](#) on responsible practices created by the Tourism Industry Association of New Brunswick.

WORKERS COMP

Nov 2: Good news for New Brunswick employers. After imposing a hefty increase in 2020, WorkSafeNB cut 2021 average premium assessments 9.6%, from \$2.40 to \$2.17 per \$100 of assessable payroll. The cut is due partly to the need for COVID-19 relief and partly due to the fact that injury frequency rates in New Brunswick are at a 10-year low.

Jan 1: The average WorkSafeNB premium assessment for 2021 is \$2.17 per \$100 of assessable

payroll, 9.6% below the 2020 rate of \$2.40. The cut is due partly to the need for COVID-19 relief and partly due to the fact that injury frequency rates in New Brunswick are at a 10-year low.

Feb 28: That's the deadline for New Brunswick employers to pay their 2021 assessments. Because WorkSafeNB is not currently accepting payments or processing Form 100s at any of its office locations due to the pandemic, this year employers must pay assessments online or by credit card at their [nearest Service New Brunswick branch](#), or by mail.

Apr 29: Be sure to use the new [Chiropractic Form 8-10](#) to report chiropractic visits of injured workers to WorkSafeNB. Previously, there were separate forms for reporting initial and follow-up visits. If you've already submitted a report on the old forms, you don't have to resubmit it.

May 31: Effective July 1, WorkSafeNB will no longer mail paper cheques or direct deposit vouchers to health care providers who treat injured or ill workers. That means providers will have to be registered for direct deposit under the agency's MyServices portal to receive payment.

Jul 1: WorkSafeNB will no longer mail paper cheques or direct deposit vouchers to health care providers who treat injured or ill workers. That means providers must be registered for direct deposit under the agency's MyServices portal to receive payment.

Jul 1: After 25 years of keeping injured workers waiting 72 hours, New Brunswick officially eliminated the 3-day unpaid waiting period for payment of workers comp benefits for work related injuries and illnesses.

WORKSAFE NB

Jun 7: Key OHS initiatives listed in WorkSafeNB's newly published [2021 Annual Plan](#):

- Workplace COVID-19 prevention
- Continued harmonization of OHS standards
- New compliance model to better identify high-risk

CASES

POSITIVE TEST IS LAST STRAW FOR SAFETY-SENSITIVE WORKER WITH ALCOHOL DEPENDENCY

For years, a plant tried to assist a mill hand in his battle against alcohol addiction. But after repeated DUI convictions and unsuccessful rehab attempts, the worker tested positive for alcohol in violation of a last chance agreement. It was the last straw and the plant terminated him. Despite the union's vigorous objections, the New Brunswick arbitrator upheld the decision. The duty to accommodate the worker's alcoholism ended at the point of undue hardship. And, sadly, that point had been reached. The worker's job was safety-sensitive and after years of assisting him without success the plant was justified in concluding that further attempts at rehab would prove futile [[Unifor, Local 907 and J. B. v Irving Paper, Limited](#), 2020 CanLII 89671 (NB LA), November 6, 2020].

FALL PROTECTION VIOLATION LEADS TO FATALITY AND \$125,000 FINE

A worker not wearing fall protection while repairing a ventilation system on the roof of a school took a step backward and plunged 5.16 metres to his death. The New Brunswick Provincial Court rejected the employer's due diligence defence

and imposed a \$125,000 fine for a fall protection violation. According to the judge, the absence of fall protection equipment and fall protection knowledge by workers and direct supervisors at the site was directly linked to the fact that the employer didn't have an OHS program [*District Scolaire Francophone Nord-Est*, NB Provincial Court, unreported, December 4, 2020].

AGRICULTURAL OPERATOR FINED \$21,600 FOR CONFINED SPACES DEATH

The incident happened in October 2019, when a farm worker was found dead outside a silo. The victim had been working and hadn't been warned about the dangers of working in a confined space. The employer got a \$21,600 fine after pleading guilty of failing to identify the silo as a confined space [*Schenkel's Farm Inc.*].

UNION SHOP STEWARD'S CONFRONTATIONAL PROTEST OF COVID RULES IS INSUBORDINATION

A union shop steward grew testy as the HR director went over the new infection control safety procedures and schedule changes the organization was planning to

implement during the height of the pandemic. “This is bulls***!”, he snapped and stormed out of the meeting. The 3-day suspension for insubordination that followed as a result of this and a pair of other clashes over COVID rules led to a union grievance. But the New Brunswick arbitrator upheld the penalty, finding that while he had a responsibility to advocate for the workers, the steward was unnecessarily confrontational and acted in a way to demean the HR director’s authority in front of co-workers. This plus the threat he uttered inviting a company official to meet him for a “man-to-man conversation outside the workplace crossed the line into insubordination, the arbitrator concluded [[CUPE, Local 3226 and Kevin Cook v Town of Quispamsis](#), 2021 CanLII 43139

NEWFOUNDLAND & LABRADOR

LAWS & ANNOUNCEMENTS

BORDER RESTRICTIONS

Nov 25: For at least the next 2 weeks, travelers to Newfoundland will once more have to self-isolate for 14 days even if they're coming from another province within the Atlantic Bubble.

COVID-19 RESPONSE

Feb 12: In response to the sudden surge of COVID cases, Newfoundland went back into Alert Level 5 calling for the closure of non-essential businesses and a ban on contacts between households (other than one-person households). Lab testing suggests that the new coronavirus B117 variant is causing the latest outbreak. The shutdown comes just as the province is holding elections.

Mar 8: The Department of Health and Community is warning residents to be on the alert for COVID vaccine scams making the rounds. As in all parts of Canada, COVID vaccination and registration in Newfoundland is

totally free. So, if somebody calls and asks for your credit card number to pay your pre-registration and vaccine fees, don't fall for it and notify the police.

DRINKING WATER

May 25: The federal government is providing \$5.5 million in Green Infrastructure Stream (GIS) funding and the province is kicking in another \$6.2 million to support drinking water and wastewater infrastructure and construction projects in 21 communities in Central Newfoundland.

ELECTRICAL SAFETY

May 1: WorkplaceNL issued a [new bulletin](#) to remind contractors of the new 2021 Canadian Electrical Code Part 1 (25th Edition) regulations that officially take effect for electrical work permits issued on or after July 1, 2021.

FALL PROTECTION TRAINING

Jan 1: WorkplaceNL fall protection certification training is now recognized in the province of Ontario. That should make it easier for workers in Newfoundland that have successfully completed such training to find jobs in Ontario.

FIRST AID

Jan 1: Although the new [OHS first aid “harmonization requirements”](#) officially take effect, Newfoundland is giving employers a grace period of one year to ensure that their workplace first aid kits meet CSA Standard Z1220-17.

Jan 1: New OHS regulations took effect designed to “harmonize” Newfoundland first aid rules with those of other provinces and territories. Specifically, workplace first aid kits must meet CSA Z1220-17 standards. Employers will have a one-year grace period, until January 1, 2022, to get into compliance.

FISH HARVESTING

Jan 15: WorkplaceNL will provide \$1.75 million in funding to keep the Newfoundland and Labrador Fish Harvesting Safety Association operating for the next 5 years. NL-FHSA has worked with fish harvesting employers and workers to cut lost-time incidence rates by 33% over the past decade. But despite those accomplishments, fish harvesting remains one of the province’s most dangerous occupations with an incidence rate of

1.8 per 100 workers, above the general provincial rate of 1.6.

MARITIME SAFETY

Feb 8: The Transportation Safety Board of Canada published its [report](#) on the investigation into the July 2020 sinking of the fatal sinking of a small unnamed fishing vessel near Sally’s Cove. The vessel was hit by a large wave and some crew members apparently weren’t wearing personal flotation devices, the report concludes.

RADIATION SAFETY

Oct 27: First Reading for [Bill 23](#), which would overhaul and modernize the *Radiation Health and Safety Act* and impose maximum \$250,000 fines for violations.

Apr 19: Newfoundland tabled [Bill 6](#), aka, the *Radiation Health and Safety Act, 2021*, which would make major changes to radiation equipment operation health and safety requirements.

ROTATIONAL WORKERS

Nov 25: Rotational workers returning to Newfoundland from a Canadian site that’s not experiencing a COVID outbreak now have to wait until day 7 of their 14-day self-isolation period to make arrangements to get tested. If they test negative and have no symptoms, they can visit extended family and public places but not mass gatherings, crowded spaces or nursing and other care facilities. And they must wear masks at all times when they leave home until the

14-day period ends.

SAFETY TRAINING

Feb 16: As it did last year at this time in response to COVID, WorkplaceNL officially extended the duration of safety training certificates due to expire on February 15 to April 30, 2021, provided that employers and supervisors continue to assess the worker's competency in the subject covered by certification training. The extension applies to certified training for:

- Confined Space Entry
- Fall Protection
- Mine Rescue
- Power Line Hazards
- Traffic Control Person
- First Aid
- OHS Committee Member/Representative/Designate
- Musculoskeletal Injury Prevention
- Supervisor Health and Safety.

TRAFFIC SAFETY

Jun 12: Motor carriers and drivers of commercial buses and trucks in Newfoundland are getting a one-year grace period to comply with the new federal law taking today that requires switching from a paper daily log to an electronic logging device (ELD) certified by a third party with Transport Canada accreditation. The grace period is necessary to give drivers and carriers time to install and get used to the ELD, according to the province.

TRAVEL RESTRICTIONS

Jun 23: Travelers from Atlantic Canada may now enter Newfoundland without undergoing testing or self-isolation. Visitors from other parts of the country must still follow testing and self-isolation rules.

WORKERS COMP

Nov 9: WorkplaceNL is keeping 2021 average workers comp rates at \$1.69 per \$100 of assessable payroll and also offering a temporary \$0.21 discount to reduce the surplus in employer-funded Injury Fund. Although lost-time injury rates have held steady at 1.6 per 100 workers over the past 5 years, claims costs have increased as a result of higher numbers of serious injuries, longer claim duration and recent benefits increases. Maximum Compensable and Assessable Earnings are increasing 1.5%, from \$66,980 to \$67,985, the highest in Atlantic Canada.

Jan 1: WorkplaceNL is keeping 2021 average workers comp rates at \$1.69 per \$100 of assessable payroll and also offering a temporary \$0.21 discount to reduce the surplus in employer-funded Injury Fund. Although lost-time injury rates have held steady at 1.6 per 100 workers over the past 5 years, claims costs have increased as a result of higher numbers of serious injuries, longer claim duration and recent benefits increases. Maximum Compensable and Assessable Earnings are increasing 1.5%, from \$66,980 to \$67,985, the highest in Atlantic Canada.

Feb 28: The normal February 28 filing deadline for submitting 2021 payroll statements and workers comp payments still holds but WorkplaceNL will operate on a very limited basis during the most recent Alert Level 5 shutdown. Services that will continue as normal include payments via pre-authorized debit, cheque, money order or a financial institution (but not cash or Interac), new employer registration and clearance letter issuance. Counter services, OHS audits and other services involving in-person contact are on hold until further notice.

Feb 28: WorkplaceNL issued [Bulletin 25](#) summarizing policy and procedure revisions that recently took effect, including those to Employer Services Policy ES-01 Personal Coverage:

- Policy name changed to Optional Coverage to incorporate the 2 types of WorkplaceNL coverage, i.e., Optional Personal Coverage and Householder Coverage)
- Included householder coverage in policy statement
- Clarified cancellation of coverage for a deferred payment arrangement that's defaulted
- Added a reference to Policy EN-22 Merits and Justice.

May 14: WorkplaceNL announced plans to roll out a new online service enabling workers to:

- Submit a Form 6 Report of Injury
- View Report of Injury submission history

- View claim and payment information
- Live chat with a WorkplaceNL Information Officer.

Jun 18: WorkplaceNL published [the report](#) of the task force reviewing Newfoundland's workers comp system. Some of the key recommendations:

- Standardize OHS training rules for JHSC members
- Review current coverage rules for workplace harassment and stress
- Modify PRIME criteria to increase small and medium business participation
- Expand cancer and other coverage presumptions for firefighters and essential workers.

WORK FATALITIES

Apr 12: There were 35 work-related fatalities in Newfoundland in 2020, 13 resulting from accidents and 22 from occupational disease. Of the latter, 26% occurred in the mining industry where exposure to harmful substances is an all-too-common occurrence. There have been 135 total workplace deaths in the province in the past 5 years.

WORKPLACE NL

May 19: Don't be surprised if you get a call from WorkplaceNL asking questions about what and how much you, your supervisors and workers know about OHS laws in the province. It's all part of a new survey campaign that will take place through June 30, with the results to be used

to assess stakeholder OHS awareness.

CASES

CONTRACTOR FACES OHS CHARGES FOR PAVING WORKER'S DEATH

Newfoundland laid half a dozen OHS charges against a paving contractor for a work fatality to a 54-year-old worker as he was preparing to pave a driveway at a home in New Harbour. Charges include failure to required safety equipment, tools, instruction, supervision and training. It sets up for what could be a fascinating trial given that the contract was also charged with failing to bar a worker's access to a worksite while he was impaired by intoxicating substances [*Paradise Paving Ltd.*, [Govt. News Release](#), April 29, 2021].

Newfoundland government for money damages to cover his business losses; and rather than a regular lawsuit, he filed a class action purporting to represent other business owners similarly affected by the travel ban. But while the legal strategy was novel, the result was the same as in Nova Scotia. The owner's theory that the COVID travel ban was a "nuisance" interfering with the use of his personal property didn't hold water, said the Newfoundland court. And even if it did, there was no distinctive class and thus no grounds to bring the suit as a class action [[Koehler v. Newfoundland and Labrador](#), 2021

BUSINESS OWNER HURT BY COVID TRAVEL BAN CAN'T SUE PROVINCE FOR DAMAGES

COVID-19 travel restrictions imposed a financial burden on many people. One of them was an Ontario resident who owned a small business in Newfoundland. The owner sued the Newfoundland government for interfering with his use of the property. A similar lawsuit in Nova Scotia failed. But this lawsuit was different. Instead of asking the court to declare the travel ban unconstitutional, the owner sued the

NORTHWEST TERRITORIES

LAWS & ANNOUNCEMENTS

ACCESSIBILITY

Nov 16: The Northwest Territories issued a statement advising business and service providers that complying with *National Building Code* standards doesn't necessarily equate to compliance with accessibility requirements. "Unfortunately, this may only become apparent after someone files a human rights complaints," the Commission warns.

BORDER RESTRICTIONS

Nov 17: Northwest Territories temporarily ended its travel bubble with Nunavut, meaning that non-essential entrants from that territory will have to self-isolate for 14 days until further notice.

Jan 5: The GNWT will no longer reimburse residents who must stay in isolation centres for discretionary or personal travel. The [new policy](#) continues to provide reimbursement for the costs of stays incurred by students and others returning from

required medical travel, medically-advised self-isolation, compassionate travel and unforeseen or exceptional circumstances.

Mar 2: Although people arriving in the Northwest Territories from Nunavut must still submit a self-isolation plan, they can now apply to the GNWT Chief Public Health Officer for an exemption if:

- They've been in Nunavut or the NWT for at least the past 14 days
- They have no COVID symptoms
- They haven't been notified that they were part of a COVID outbreak.

Jun 2: Travelers from Yukon can now apply to ProtectNWT for exemptions from self-isolation, provided that they've been in Yukon or the Northwest Territories for at least the past 14 days and don't pass through another jurisdiction on their way. This is also the same process the GNWT is using for

CLIMATE CHANGE

Feb 4: As required by the Pan-Canadian Framework on Climate Change, the GNWT is increasing its carbon tax to \$40 per carbon-equivalent tonne of greenhouse gas emissions on July 1, 2021. Carbon tax revenues will be returned to NWT businesses and residents via rebates and the Cost of Living Offset and also invested in projects to cut greenhouse gas emissions.

CONSTRUCTION

Apr 15: For the first time in over a decade, the GNWT published an updated version of its [Good Building Practice for Northern Facilities](#) guidelines for building owners, developers, planners, builders and suppliers to supplement national building codes. The new 4th Edition includes new chapters on climate change, environmental regulation and hazardous building material assessments.

May 6: The federal government announced that it will provide over \$2 million in Investing in Canada funding for 8 different infrastructure, culture and community development projects across the Northwest Territories.

COVID-19 LEAVE

Nov 4: Northwest Territories is among only 3 jurisdictions (Nunavut and Nova Scotia are the other 2) that hasn't adopted unpaid leave for employees affected by COVID-19. But that's about to change. New [Bill](#)

[20](#) creating leave for COVID-19 and other public emergencies is on to Third Reading and likely passage.

Jul 1: The GNWT finally did what all but one other jurisdiction (Nunavut remains the lone holdout) did months ago: Give workers unpaid leave for COVID. Leave is retroactive to March 18, 2020, when the public health emergency began.

Translation: Workers who were previously terminated for missing work due to COVID may be able to sue their employers for wrongful dismissal.

COVID-19 RELIEF

Jan 5: Northwest Territories residents who must stay in isolation centres for discretionary or personal travel will no longer be able to get reimbursed by the government. Under its [new policy](#), the GNWT will cover the costs of stays related only to medical travel, medically-advised self-isolation, compassionate travel and unforeseen or exceptional circumstances.

COVID-19 RESPONSE

Nov 19: Continuing shortages of shelter space due to COVID have made it necessary for the City of Yellowknife to extend its State of Emergency through December 4.

Jan 19: To nobody's surprise, the GNWT extended the Public Health Emergency due to expire today through February 2, 2021. And that pattern of 2-week extensions is likely to continue through the foreseeable future.

Feb 11: The GNWT extended the State of Emergency in the City of Yellowknife to February 25, 2021. Expect the pattern of 2-week extensions to continue through the foreseeable future.

Mar 12: The GNWT began offering COVID vaccines to non-resident rotational workers at mineral and petroleum projects. The idea is to protect the many residents who work at these sites. The GNWT is considering adding foreign workers at other types sites to the vaccine priority list.

Jun 10: At long last, the GNWT announced the details of its “Emerge Wisely” plan for reopening and relaxing COVID public health restrictions in stages based on current case rates and vaccination numbers.

Jun 29: The GNWT loosened COVID restrictions to allow indoor events and gatherings of up to 200 people. However, government approval is still required for so called “high-risk activities,” including gatherings of over 200, funerals/celebrations of life, winter sports, indoor dancing and hand games.

EMERGENCY LEAVE

Jul 1: In addition to the new COVID leave, NWT workers can now take unpaid leave if any future pandemics or public emergencies occur. As with COVID leave, the new emergency leave covers all workers regardless of how long they’ve been employed

and can be taken without giving the employer a doctor’s note or medical certification.

EMERGENCY RESPONSES

Jun 14: NWT residents, small businesses and municipalities impacted by the recent floods will be able to get federal Disaster Assistance Policy (DAP) relief faster via the Emergency Disaster Assistance Advance Program (EDAAP), which pays an advance of up to 50% of claims. EDAAP funds will then be subtracted from the claimant’s total DAP benefits.

ENVIRONMENTAL AUDIT

Oct 30: The GNWT’s [Environmental Audit](#) concludes that the territory’s environmental regulatory system has continued to improve in the past 5 years, particularly in regard to climate change and land, water and resource management. Areas requiring improvement include land use planning, finalizing land claims and community engagement.

FIRST AID

Jan 1: First aid harmonization OHS changes officially take effect, but employers will get one full year to bring their first aid kits up to CSA Z1220-17 standards. Current first aid certificates will remain valid until they expire. After that, though, new certificates must meet the harmonization requirements.

HUMAN RIGHTS

Jun 8: The NWT Human Rights Commission issued a reminder that those who provide people public services, both in the government and private sector, must accommodate persons with disabilities when carrying out medical testing, workplace screening and isolation requirements. Providers “must be sensitive, inclusive and flexible when implementing blanket policies that can have an adverse impact on persons with disabilities,” the Commission warned.

INCIDENT REPORTING

Feb 1: Although substantive OHS incident reporting rules haven’t changed, employers now have to use the WSCC Connect e-business service to complete any required [OHS incident reports](#). The way it works: First, you fill out the Incident Section; if you indicate that you’ve had a reportable injury, the service will direct you to the Injury Section. As before, in addition to completing the Employer’s Report of Incident within 3 business days, you must also immediately report any incident involving serious injury or death by calling the WSCC’s 24-hour Incident Reporting line at (800) 661-0792.

OHS ENFORCEMENT

May 1: According to the WSCC [2021 Corporate Plan](#), the Large Employer sector inspection initiative this year will focus on workplaces in Government, Construction, Mining and Hamlets/Senior Administrative Officers.

RETURN TO WORK

Feb 15: The WSCC published a new [Code of Practice](#) to help employers implement a return to work process for workers coming back after workplace injuries. The Code includes guidance on legal requirements and templates for return to work programs, procedures and policies.

TRAVEL RESTRICTIONS

Jun 21: NWT residents, non-resident essential service workers and other exempted travelers who are fully vaccinated can now enter the territory without self-isolating. Everyone still has to submit a Self-Isolation Plan for potential contact tracing purposes. The Chief Public Health Officer also rescinded the recommendation that people travel only for essential purposes.

WATER HAZARDS

Nov 19: The GNWT warned that water levels and flow rates on many lakes, rivers and streams due to this summer’s heavy snow and rain are likely to remain abnormally high throughout the winter. The result may be overflow and later than usual freeze-up and risks of thin ice in places you wouldn’t normally expect it.

WORKERS COMP

Jan 1: Automatic payments by credit card will be reactivated in [WSCC Connect](#) starting today. The 2% per month penalty on overdue payments,

which was temporarily suspended in response to COVID, went back into effect after October 1, 2020.

Jan 1: Due to COVID-related uncertainty, the WSCC kept 2021 average workers comp premiums at \$2.40 per \$100 of assessable payroll, although some group rates have changed a bit.

Jan 1: The WSCC published the Northwest Territories workers comp daily travel allowance rates for 2021:

- Breakfast: \$24.85
- Lunch: \$30.15
- Dinner: \$64.50
- Incidental expenses: \$17.30.

Jan 15: Comments closed on proposed changes to 3 policies that the WSCC plans to take up at its March 2021 governance meeting:

- [Policy 00.04, Yearly Maximum Insurable Earnings \(YMIR\)](#)
- [Policy 00.09, Partnerships](#)
- [Policy 08.02, Appealing Decisions.](#)

Feb 1: The WSCC is reminding NWT employers to submit their [Annual Payroll Report for 2021](#) by February 28 to avoid late fees and penalties. You should have received a reporting package in the mail from the WSCC by now. If not, contact an agency representative immediately.

Mar 1: The WSCC plans to approve changes to these 3 workers comp policies at its upcoming governance meeting:

- [Policy 00.04, Yearly Maximum Insurable Earnings \(YMIR\)](#)
- [Policy 00.09, Partnerships](#)

- [Policy 08.02, Appealing Decisions.](#)

Mar 1: The WSCC proposed changes to a pair of workers comp policies. Deadline to comment: April 15, 2021:

- [Policy 00.04](#), Yearly Maximum Insurable Earnings (YMIR)
- [Policy 00.10](#), Official Languages.

Jul 8: That's the deadline [to comment on proposed changes](#) to the following workers comp policies that the WSCC plans to take up at its September governance meeting:

- [Policy 00.02](#): Reconsidering a Decision
- [Policy 06.01](#): Pension Entitlement
- [Policy 06.02](#): Pension Conversions and Advances
- [Policy 06.03](#): Calculation of

CASES

IT'S 3 STRIKES AND Y'ER OUT FOR FIRED DIAMOND MINER

Strike 1: A diamond miner fired for a series of relatively minor safety violations lost his OHS reprisal case.

Strike 2: He then sued for discrimination on the basis of race, colour, disability and ancestry but the Northwest Territories Human Rights Director found no evidence of discrimination and tossed the claim.

Strike 3: The appeals panel ruled that the Director's decision was not only reasonable but correct and dismissed the appeal [[Duley v De Beers Canada Inc.](#), 2021 CanLII

NOVA SCOTIA

LAWS & ANNOUNCEMENTS

BORDER RESTRICTIONS

Nov 9: With COVID cases once more on the rise, Nova Scotia tightened its travel restrictions. Effective today, everybody in the home where non-essential travelers entering the province from outside Atlantic Canada go to self-isolate will have to self-isolate as well. That means nobody can leave or visit the home for 14 days.

Jan 9: With COVID cases spiking in New Brunswick, Nova Scotia tightened its border restrictions. Effective today, people entering the province from New Brunswick must complete the Nova Scotia Safe Check-in form before they arrive and self-isolate for 14 days upon arrival. Those rules also apply to Nova Scotians returning from New Brunswick. Permanent residents of PEI and Newfoundland, where case rates remain relatively stable, don't have to self-isolate if they drive straight through New Brunswick to Nova Scotia with no or minimal stops.

Feb 10: Nova Scotia tightened its border restrictions in response to the recent outbreaks in neighbouring Newfoundland. People entering from

that province now have to complete the Nova Scotia Safe Check-in form before arriving and then self-isolate for 14 days upon arrival. Exemptions apply to, among others, workers who must travel for their jobs and travel for essential health services.

May 10: With case rates reaching a new high, Nova Scotia banned entry for non-essential travel, including people moving to the province and residents of Newfoundland and Prince Edward Island for at least until the end of May. The only exceptions:

- People who live in Nova Scotia whose main job is in another province
- Post-secondary students coming or returning to Nova Scotia to study
- People from New Brunswick traveling for work, school or childcare only
- Temporary foreign workers authorized by the federal government
- Skilled workers but only to do critical infrastructure work.

May 21: People can now move to Nova Scotia with immediate family members who live in the same household if they have:

- A real estate agreement showing an accepted offer on or before May 1, 2021
- Proof of ownership of property in Nova Scotia
- A minimum one-year lease signed on or before May 1, 2021
- A letter of acceptance for new employment in Nova Scotia dated on or before May 7, 2021.

COLD STRESS

Feb 19: The Nova Scotia WCB issued a new [Safety Bulletin \(Number: 0000004\)](#) making it clear that an employer’s general duty to “take every reasonable precaution to ensure the health and safety of persons at or near the workplace” under the *OHS Act* includes protecting workers from hazards of cold stress.

COMMERCIAL DRIVERS

Dec 16: Effective today, nurse practitioners are allowed to complete the medical assessment forms required for commercial driver licence applications. Previously, such forms had to be completed by a physician.

CONTACT TRACING

Nov 23: Effective today and until further notice, full-service restaurants across Nova Scotia must collect contact information—date and time of visit, names, phone numbers—from at least one person in each party and retain the information for 4 weeks for contact

tracing purposes.

COVID-19 ENFORCEMENT

Apr 25: Nova Scotia doubled the fine for a violation of gathering limits and other COVID-19 health restrictions to \$2,000 for a first offence.

COVID-19 RESPONSE

Feb 8: Having managed to evade the outbreaks taking place in Newfoundland and New Brunswick, Nova Scotia loosened its public health restrictions to allow retail businesses and fitness establishments to operate at 75% capacity. Events of up to 150 people outdoors or 50% of capacity indoors (up to 100) are also allowed. Restrictions on restaurants and bars are unchanged, including mandatory closing by 10 pm and 11 pm, respectively.

Mar 26: That’s the date newly tightened public health restrictions in Halifax and neighbouring municipalities will remain in effect, unless they’re extended:

- Restaurants and licensed establishments must stop service by 9 pm and close by 10 pm
- Business and organized club meetings and training limited to 25 people
- Religious gatherings limited to 150 outdoors and 100 or 50% capacity indoors
- No sports, special events, arts and culture events
- Wedding and funeral ceremonies limited to 10

people with no visitations or receptions.

May 10: With cases at a record high, Nova Scotia went into full shutdown mode. Food, pharmacy and other essential retailers can remain open but only up to a maximum of 25% of capacity.

May 26: Nova Scotia will get \$4.2 million in federal funding to operate safe voluntary isolation sites where residents with infections or recent close exposure to confirmed positive cases can go if they can't isolate at home, for example, because their housing is too crowded.

Jun 2: Nova Scotia moved from shutdown to phase one of its reopening plan, allowing:

- Outdoor gatherings with a “consistent social group” of up to 10 people
- Patio dining at restaurants up to 10 per table and midnight closing
- Personal services by appointment only.

COVID-19 SCREENING

Jun 11: Nova Scotia, local chambers of commerce and other partners have enlisted 275 participants for the new COVID-19 Rapid Screening Program for Workplaces. Under the program, businesses and organizations [submit a testing plan](#) to the Department of Health and Wellness and receive free testing kits supplied by the federal government if the plan is approved.

DRIVERS LICENCES

Jun 16: The Registry of Motor Vehicles began rescheduling driver road tests that it previously cancelled as a result of COVID. Once all cancellations are rebooked, it will begin booking new appointments in early August.

FACE MASKS

Dec 2: Although non-medical face masks are now mandatory in indoor workplaces, employers must still make exemptions for persons with disabilities or for whom wearing a mask may create a health or safety danger. The Nova Scotia Human Rights Commission issued [guidelines](#) to help employers make the necessary accommodations to face mask rules.

FARM SAFETY

Dec 31: That's the deadline for Nova Scotia farmers that implemented workplace health and safety improvements and COVID-19 infection control measures to apply for government funding to recover some of their costs. The funding, which is part of a new \$1.2 million agreement between the federal government and Nova Scotia, will provide up to 75% of eligible project costs up to a maximum of \$50,000.

FIRST RESPONDERS

Dec 3: The Nova Scotia WCB launched a new [website](#) to help first responders deal with stress and

mental health issues caused by the trauma they experience at work. Modelled after a similar program from WorkSafeBC, [FirstRespondersMentalHealthNS.com](https://www.firstrespondersmentalhealthns.com) offers self-assessments, online counseling, mobile apps, training materials and management toolkits.

FORESTRY SAFETY

Feb 26: That's the deadline for Nova Scotia small and medium-sized forestry sector operations (i.e., those with fewer than 500 employees) [to apply](#) for government reimbursement for the extra workplace safety costs they incurred as a result of the COVID pandemic between April 1 and December 31, 2020. Eligible costs include PPE, handwashing stations, extra vehicles and accommodations, sanitization and self-isolation facilities.

HUMAN RIGHTS

Nov 26: The Nova Scotia Human Rights Commission issued a statement reminding employers that treating employees unfavourably because they have or are perceived as having COVID for reasons not related to public health is discrimination. Other key points:

- Employers must accommodate employees' COVID needs to the point of undue hardship based on cost, or health and safety
- Employers can send employees home or ask them not to work due to COVID as long as their concerns are reasonable and in line with current public health guidance

- Employers shouldn't discipline employees who are absent due to COVID as long as those employees are following current guidance
- Employers should consider making schedule accommodations for employees whose caregiving needs are being affected by COVID.

IMMIGRATION

Jun 16: Nova Scotia revised the Occupations in Demand immigration stream to allow employers to hire international newcomers for heavy equipment operator (other than cranes) and construction trade helper and labourer positions.

MENTAL STRESS

Nov 16: The Nova Scotia WCB is looking to hire healthcare professionals to help it create a new policy on providing workers compensation mental health and support services to workers who suffer work-related traumatic psychological injuries.

PPE

Mar 11: Newly tabled Private Member [Bill 8](#) would require employers to provide employees non-medical grade masks or face coverings to employees free of charge when required by the Nova Scotia Chief Medical Officer. The provincial government and municipalities would also have to provide free masks to the public if recommended by the CMO.

Apr 28: Face masks are now mandatory:

- In private indoor workplaces in all common areas, places in which there's contact with the public and poor ventilation areas
- For childcare services staff members, visitors and children over age 2
- Outside in any location where social distancing can't be maintained.

\$160 per employee per day for up to 4 days, \$640 in total. Rules:

- Doesn't cover workers who can work remotely
- Doesn't cover workers who miss more than 50% of their scheduled work time in a one-week period due to COVID
- Covers sick days taken between May 10 and July 31, 2021, which need not be taken consecutively.

ROTATIONAL WORKERS

Jan 15: Effective today, testing is mandatory for rotational workers who work outside Nova Scotia, PEI and Newfoundland. Rotational workers must also complete a full 14 days of modified self-isolation even if they test negative for COVID. Testing is required on days 1 and 2, and again on days 6, 7 or 8. Enforcement personnel will perform random audits and hand out fines of \$1,000 to workers who don't get tested.

May 10: From now through at least the end of the month, rotational workers returning home from outbreak zones can no longer do modified self-isolation but must do the full 14 days in a totally separate space from the other people in their households. Sharing a bathroom is okay, but if it's cleaned between uses. No medical appointments are allowed, except for an emergency.

SICK LEAVE GRANTS

May 26: Employers providing paid COVID sick leave can now [apply for government reimbursement](#) of up to

TRAFFIC SAFETY

Jan 8: Comments closed on proposed new *Traffic Safety Act* regulations that, among other things:

- Clarify the rules for use of hand-held devices while driving
- Provide new safety measures to protect cyclists
- Update seatbelt use requirements for emergency

TRAVEL RESTRICTIONS

Jul 5: Any international traveler that meets federal quarantine requirements for entering Canada is now allowed into Nova Scotia. The move comes a week after the province began allowing travelers from other parts of Canada to enter without having to self-isolate or complete the Nova Scotia Safe Check-In form. Travelers are encouraged but not required to get vaccinated and undergo regular COVID testing.

WORKERS COMP

Jan 1: For the 17th year in a row,

Nova Scotia's average assessment rate is \$2.65 per \$100 of assessable payroll in 2021. Of the province's 20,950 covered employers, rates are staying the same or decreasing for 67% and going up for 33%, including the 0.54% who will have to pay a surcharge.

Mar 3: The Nova Scotia WCB reminded employers that they no longer have to complete and submit formal subcontractor reports. If you hire subcontractors operating in a mandatory industry who don't have workers comp coverage, include the labour portion of those contracts in your regular WCB payroll reporting. While you're not required to do so, you should consider submitting a list of your subcontractors and their respective payroll. If you don't submit such a list, the WCB "strongly recommends" that you keep your own records of this information in case of an audit.

Apr 27: Due to increasing COVID case counts and travel restrictions, WCB Nova Scotia had to postpone all Permanent Medical Impairment appointments over at least the next 2 weeks. The agency will reach out to affected workers to reschedule.

May 3: Like it did last year at this time to give employers hard hit by the pandemic some financial relief, WCB Nova Scotia announced that it will defer the deadline for 2021 workers comp premium payments until July 31, 2021.

Jun 7: WCB Nova Scotia resumed in-person Permanent Medical Impairment (PMI) assessments in

Halifax and Sydney, but by appointment only. If one of your workers had a PMI assessment postponed due to the recent COVID restrictions, the WCB will contact him/her to reschedule.

Jun 24: WCB Nova Scotia resumed in-person Permanent Medical Impairment (PMI) assessments in Halifax and Sydney, but by appointment only. And now for the first time, less complex PMI assessments can be done virtually via real-time video conference without workers having to leave their homes.

Jun 25: From now through Sept. 30, 2021, the Nova Scotia WCB is holding public consultations on its [policies](#) governing when employers must re-employ workers who suffer work-related injuries and illnesses.

Jul 31: Reminder: That's the last day for employers who were financially affected by the pandemic to submit their 2021 workers comp premium payments and payroll reports to WCB Nova Scotia.

WORK INJURIES

Nov 19: The dip in time-loss work injuries in April, May and June versus the second quarter of 2019 from 1,225 to 958 is partly attributable to the fact that fewer people were working. Moreover, the composite duration index, or average numbers of days per claim, for injuries that do occur continues to climb, reaching 167 days as of Q2, 20 days more than the same quarter in 2019. One item of good news in

the new [Nova Scotia WCB Report](#) is that the workers comp funded ratio has bounced back to 93% after declining to 88% at the end of the first quarter.

Feb 1: With so many workers forced to stay home, it's not surprising that the lost-time injury rate in Nova Scotia during the third quarter of 2020 was an abnormally low 1.52, while claims totaled 1,280 as compared to 1,500 over the same period in 2019. What *is* surprising, and quite troubling, is that acute workplace fatalities are actually up over the first 9 months of 2020 at 7, versus 5 for all of 2019.

May 5: With so many workers out, time-loss claims in Nova Scotia fell 12% to a record low 4,997 in 2020, with sprains and strains, mostly to the back, continuing to be the leading cause. Continuing long term trends, the injuries that do occur are taking longer to recover from, with over 1.1 million work days lost, an average of 178 days per claim. Other key statistics in WCB Nova Scotia's [newly released report](#) for 2020:

- Registered claims down 20%, to 19,994 vs. 24,900 in 2019
- Injury rate down 8% from 1.67 to 1.54 per 100 workers
- 32 work fatalities, 18 from acute incidents and 14 from occupational illness

WORKPLACE FATALITIES

Mar 4: There were 32 workplace fatalities in Nova Scotia in 2020, 10 more than in 2019. Making that number even more disturbing is that it occurred during a year when so

many fewer workers were on the job due to COVID. But while the 2020 lost time claims rate for nonfatal injuries was abnormally low, acute fatalities hit a 10-year-high at 18. One-third of those fatalities were the result of the tragic sinking of the *Chief William Saulis* and the loss of its 6-member crew. There were also 14 chronic fatalities—7 due to occupational diseases and 7 caused by heart attacks and other

CASES

WORKERS COMP MUST PAY FOR INJURED WORKER'S STAIR LIFT

A worker with a work-related foot injury installed a stair lift in her home but workers comp refused to pay for it. Its reasoning: Her benefits were for chronic pain and the evidence didn't show she had mobility issues. The worker appealed, citing the new report from her physiotherapist indicating that climbing stairs put the worker at risk of falling and recommending use of the stair lift. This was enough to persuade the Nova Scotia Workers Comp Appeals Tribunal that the worker had a valid claim and award her reimbursement for the stair lift [[2020-103-AD \(Re\)](#)], 2020 CanLII 83222 (NS WCAT), October 27, 2020].

IS HEALTH FACILITY'S BAN ON MOONLIGHTING A VALID COVID SAFETY MEASURE?

After the pandemic broke out, an adult treatment and rehab provider banned employees from working for other employers. Just complete your shift and go straight home, stated the directive. The provider offered to ensure union workers guaranteed shifts to make up for the income losses. When the union didn't object, the provider thought it had a deal. But a week later, the union filed a grievance. The Nova Scotia arbitrator found the provider violated

the collective agreement but still tossed the grievance. Normally, employers can't tell employees what to do in their spare time; but during a pandemic, the directive was a valid safety measure. Even so, the provider didn't consult with the union the way the collective agreement required. But at the same time, the union's conduct gave the provider a reasonable belief that it accepted the directive. Consequently, it was "estopped," i.e., banned in the interest of fairness from grieving the directive [[CUPE, Local 3513 v Breton Ability Centre](#), 2020 CanLII 93886 (NS LA), December 1, 2020].

COURT REFUSES TO GIVE EMPLOYER BLANK CHEQUE TO DISCIPLINE FOR OHS INFRACTIONS

After her fourth safety violation, the City of Halifax decided that progressive discipline had run its course and fired a municipal bus driver. The Nova Scotia arbitrator found the penalty excessive and reinstated the driver. So, the City appealed, contending that the arbitrator had turned a blind eye to safety and OHS compliance. The court disagreed and upheld reinstatement. True, the driver's position was safety-sensitive and 3 of the 4 offences she committed also violated OHS laws. But the City's argument that the court should "err

on the side of caution” when ruling on discipline for an OHS infraction to protect the public would “ignore nuance” and create a “fundamental shift” in the law that would enable employers to terminate workers any time they committed a safety infraction [[Halifax \(Regional Municipality\) v. Amalgamated Transit Union, Local 508](#), 2020 NSSC 361 (CanLII), December 10, 2020].

DOES WORKERS COMP COVER HOSPITAL WORKER’S CARPAL TUNNEL SYNDROME?

A year after returning to work from a work-related shoulder injury, a hospital worker tasked with sterilizing medical instruments was diagnosed with carpal tunnel syndrome. The workers comp case worker found that the new condition wasn’t work-related because her job duties didn’t subject her to the repetitive forces necessary to cause carpal tunnel syndrome. But the Nova Scotia appeals tribunal reversed the ruling. The evidence showed that her work duties were a factor in causing her carpal tunnel syndrome, it concluded. For 12 years, she worked 8 hours a day, 5 days a week cleaning, drying, assembling, disassembling, inspecting, and delivering trays and equipment relying on her dominant right hand. Heck, the hospital’s own site hazard analysis specifically flagged this position as carrying the risk of carpal tunnel syndrome [[2017-580-AD \(Re\)](#), 2020 CanLII 106772 (NS WCAT), December 29, 2020].

DUMP TRUCK OHS VIOLATIONS LEAD TO WORKER’S DEATH AND \$65,000 IN FINES

A construction firm and management company were fined \$25,000 for a pair of OHS violations for an incident in which a dump truck was backed at the water’s edge of the working face without appropriate measures being in place resulting in a fatal injury. An individual, presumably a company owner but perhaps a supervisor, was also fined \$40,000 for his role in the incident. All 3 defendants were also hit with non-monetary creative sentence penalties [*Site Logic Construction Management, Foreshore Property Specialists, David Seaboyer*].

COURT MORE THAN DOUBLES OHS FINE AGAINST GARAGE OWNER FOR EXPLOSION DEATH

The acetylene torch a garage mechanic was using to remove the gas tank from a 1999 Dodge Caravan sparked an explosion that cost him his life. While beating the C-45 criminal negligence rap, the garage owner was convicted of a series of OHS violations in 2019, including lack of proper PPE and safe work procedures, failure to drain the tank and fuel lines and improper storage of acetylene tanks and, of course, using an acetylene torch to remove the gas tank. But the fine was only \$27,250. Not enough, argued the Crown, and now a Nova Scotia court has agreed and more than doubled the fine to \$67,500. The sentencing judge placed too

much emphasis on the owner's status as a small business and not enough on his blameworthiness. Moreover, it shouldn't have relied on fine amounts from old cases that came down before Nova Scotia increased its OHS penalties [[R. v. Hoyeck](#), 2021 NSSC 178 (CanLII), May 21, 2021].

DEPT. OF TRANSPORTATION FINED NEARLY \$100,000 FOR FATALITY TO CONTRACTOR'S WORKER

A government agency has been hit with an \$97,250 in OHS penalties, including a creative sentence of \$80,000 to make 4 safety videos, for a fatal injury to a third-party general contractor's worker who was run over by a work vehicle going in reverse, apparently on a public roadway [*Nova Scotia Dept. of Transportation and Infrastructure*].

NUNAVUT

LAWS & ANNOUNCEMENTS

BORDER RESTRICTIONS

Nov 17: Northwest Territories temporarily ended the travel bubble with Nunavut, meaning that non-essential entrants from that territory will have to self-isolate for 14 days until further notice.

Jun 14: Effective today, travelers who are fully vaccinated will no longer be required to self-isolate before entering Nunavut. Travelers will still have to apply for an isolation exemption by submitting a form to vaccineexemptions@gov.nu.ca. Full vaccination status kicks in 2 weeks from the date of the second vaccination.

COVID-19 RESPONSE

Nov 18: Nunavut entered full lockdown mode meaning all non-essential businesses must shut down in-person operations for the next 14 days. After months without any cases, Nunavut had its first reported COVID case in early November. A surge of new cases rapidly followed resulting in the decision to implement “circuit-breaker lockdown.”

Jan 6: Nunavut began providing COVID-19 vaccinations after receiving the first 6,000 doses last week. Elderly people in Iqaluit received the initial doses. Next in line are residents in communities with long-term elder care facilities, including Gjoa Haven, Igloodik, Cambridge Bay and Arviat.

Feb 15: Arviat has become a COVID-19 hot spot, accounting for all 18 active cases in Nunavut, including 7 new cases reported just today. Vaccine clinics continue operate all across the territory with 6,500 Nunavummiut having received at least one dose of the Moderna vaccine to date.

Mar 10: With the Arviat outbreak finally receding, Nunavut let businesses and workplaces in the region re-open. Schools were also allowed to open at Stage 3. Also getting the green light were daycare centres with enhanced cleaning and outdoor gatherings of up to 25 people. Masks remain mandatory for persons leaving the household.

Apr 27: All restaurants, bars and clubs in Nunavut are now limited to operating at 50% capacity. Restaurants in Iqaluit and Kinngait

where breakouts are taking place, will continue to operate as takeout only.

FIRST AID

Feb 28: Nunavut officially [“harmonized” its OHS Regulations](#) by revising the requirements for first aid staffing, training, kits and equipment in accordance with nationally recognized standards.

INCIDENT REPORTING

Feb 1: Although substantive OHS incident reporting rules haven’t changed, employers now have to use the WSCC Connect e-business service to complete any required [OHS incident reports](#). The way it works: First, you fill out the Incident Section; if you indicate that you’ve had a reportable injury, the service will direct you to the Injury Section. As before, in addition to completing the Employer’s Report of Incident, you must also immediately report any incident involving serious injury or death by calling the WSCC’s 24-hour Incident Reporting line at (800) 661-0792.

JOBS

Apr 21: GN leaders were pretty happy with the newly proposed federal budget, which \$18 billion in funding to support construction, infrastructure and services in the territory over the next 5 years, including:

- \$25 million for short-term housing and infrastructure in 2021

- \$15 million over 3 years for the HMS Erebus and Terror archeological project
- \$40.4 million for feasibility planning for hydroelectricity and grid interconnection projects.

MINING

Jul 12: The Chief Public Health Officer declared the COVID-19 outbreak at Baffinland’s Mary River Mine officially over, allowing the mine to resume normal operations. It’s been 4 weeks since the last reported case at the mine.

OHS ENFORCEMENT

May 1: According to the WSCC [2021 Corporate Plan](#), the Large Employer sector inspection initiative this year will focus on workplaces in Government, Construction, Mining and Hamlets/Senior Administrative Officers.

PPE

Jun 14: Masks are now mandatory in every community across Nunavut for everybody, including the fully vaccinated, anywhere and anytime that it’s not possible to maintain the required 6 feet/2 metres of physical distance.

RETURN TO WORK

Feb 15: The WSCC published a new [Code of Practice](#) to help employers implement a return to work process for workers coming back after workplace injuries. The Code

includes guidance on legal requirements and templates for return to work programs, procedures and policies.

TOILET FACILITIES

Jan 1: Nunavut revised its requirements on the minimum number of toilet facilities a work site must have based on how many workers are at the site (under Schedule K of the *OHS*

Regulations):

- 1 to 10 workers: 1 toilet
- 11 to 25 workers: 2 toilets
- 26 to 50 workers: 3 toilets
- 51 to 75 workers: 4 toilets
- 76 to 100 workers: 5 toilets
- More than 100 workers: 5 toilets + 1 additional toilet for each increment of 30 workers above 100.

WORKERS COMP

Nov 30: Reminder: This is the final day for NWT and Nunavut employers that have undergone significant staffing changes as a result of COVID-19 [to report payroll changes](#) of 25% or more to the WSCC to avoid being subject to the Underestimating Penalty.

Jan 1: Due to COVID-related uncertainty, the WSCC kept 2021 average workers comp premiums at \$2.40 per \$100 of assessable payroll, although some group rates have changed a bit.

Jan 1: The WSCC published the Nunavut workers comp daily travel allowance rates for 2021:

- Breakfast: \$27.85

- Lunch: \$33.80
- Dinner: \$90.05
- Incidental expenses: \$17.30.

Jan 15: Comments ended on proposed changes to 3 policies that the WSCC plans to take up at its March 2021 governance meeting:

- [Policy 00.04, Yearly Maximum Insurable Earnings \(YMIR\)](#)
- [Policy 00.09, Partnerships](#)
- [Policy 08.02, Appealing Decisions](#).

Feb 1: The WSCC is reminding Nunavut employers to submit their [Annual Payroll Report for 2021](#) by February 28 to avoid late fees and penalties. You should have received a reporting package in the mail from the WSCC by now. If not, contact an agency representative immediately.

Mar 1: The WSCC plans to approve changes to these 3 workers comp policies at its upcoming governance meeting:

- [Policy 00.04, Yearly Maximum Insurable Earnings \(YMIR\)](#)
- [Policy 00.09, Partnerships](#)
- [Policy 08.02, Appealing Decisions](#).

Mar 1: The WSCC proposed changes to a pair of workers comp policies. Deadline to comment: April 15, 2021:

- [Policy 00.04](#), Yearly Maximum Insurable Earnings (YMIR)
- [Policy 00.10](#), Official Languages.

Jul 8: [Comments closed on proposed changes](#) to the following workers comp policies that the

WSCC plans to take up at its September governance meeting:

- [Policy 00.02](#): Reconsidering a Decision
- [Policy 06.01](#): Pension Entitlement
- [Policy 06.02](#): Pension Conversions and Advances
- [Policy 06.03](#): Calculation of Permanent Compensation.

restrictions in Nunavut, while clarifying that smoking is still allowed in:

- Designated smoking structures that are properly marked, located and ventilated
- Parts of a workplace used as a private residence
- Properly designated locations at mines by workers required to stay in the workplace for the

WORKPLACE SMOKING

Jun 8: Newly adopted [Bill 57](#) tightens indoor workplace and vehicle smoking and vaping

CASES

EMPLOYER FINED \$75,000 FOR DEATH OF WORKER KILLED ON FIRST DAY OF THE JOB

A supervisor was showing a new worker who had started the job that same day how to safely use a handheld grinder to cut metal barrel that had previously contained hazardous materials. The first barrel cut was a success. But as the worker prepared to cut a second barrel, the supervisor had to step away. The worker decided to proceed with the operation while the supervisor was gone. **Result:** Sparks from the grinder ignited combustible gases in the barrel resulting in an explosion that cost the worker his life. The worker's employer was fined \$75,000 after pleading guilty to a series of OHS violations, including failing to perform a hazard assessment, decontaminate the barrel, provide the victim a safety

orientation and ensure he was properly supervised [[R. v Tower Arctic](#), 2020 NUCJ 39 (CanLII), December 14, 2020].

MINE OPERATOR FINED \$170,000 FOR NOT TRAINING HEAVY EQUIPMENT INCIDENT VICTIM

In what may be a record penalty for a *Mine Health Safety Act* offence in Nunavut, a mine was fined \$170,000 (plus a 15% Victim Fine Surcharge) for failing to provide required safety training to a worker who was killed while operating heavy equipment in a mine. The victim should have been instructed on safe operation of the loaded equipment on a downhill gradient. The mine was shut down immediately after the incident but has since re-opened subject to interim safety restrictions [[Baffinland](#)

Iron Mines Corp., [Govt. Press Release](#), February 18, 2021].

HAMLET GETS 18 MONTHS' CORPORATE PROBATION FOR DEFYING STOP WORK ORDER

WSCC inspectors issued a stop work order banning the Hamlet of Qikiqtarjuag from operating an aerial device lifting unit. They later returned and spotted workers using the device in violation of the order. The Hamlet pled guilty to an OHS violation; but instead of a fine, it was sentenced to 18 months of corporate probation under which it must report to the territory's Chief Safety Officer and submit to WSCC inspections [*Hamlet of Qikiqtarjuag, [WSCC](#)*].

ONTARIO

LAWS & ANNOUNCEMENTS

ACCESSIBILITY

Jan 1: That's the deadline for Ontario companies and non-profits with 50+ employees to ensure their [websites and internet content meets WCAG 2.0 Level AA guidelines](#) for accessibility under the AODA. However, the AODA Compliance Reporting deadline for companies and non-profits with 20 to 49 employees has been pushed back 6 months to June 30, 2021.

BORDER RESTRICTIONS

Dec 11: Effective today, individuals in Ontario seeking COVID testing to gain clearance for international travel are no longer eligible for a publicly funded COVID test. They can still get the test but they'll just have to pay for it themselves.

COVID-19 ENFORCEMENT

Jan 20: Ontario is stepping up workplace inspections to enforce COVID restrictions. Starting today, more than 300 government inspectors will visit workplaces that have been allowed to remain open, including big-box stores and other retail establishments, restaurants

providing take-out, gas stations, farming operations and other essential businesses. The move comes a week after an inspection blitz of 240 big-box stores in the Toronto area uncovered 76 COVID violations and only 69% compliance.

Feb 1: Potential maximum fines for violating COVID public health orders in Ontario:

- Corporations: \$1,000
- Employees and customers: \$750
- Individuals actually tried and convicted: \$100,000
- Directors and officers of corporations actually tried and convicted: \$500,000
- Corporations actually tried and convicted: \$10 million.

Feb 10: Ontario is stepping up site enforcement COVID restrictions, focusing on retail. Since January 1, officers have conducted 16 inspection campaigns covering over 2,308 "big-box" stores and other retail businesses. Although 218 tickets have been issued, officers are seeing a steady increase in compliance rates (up nearly 20%) over the past 3 weeks. Most common violation cited: failure to properly screen staff and customers.

The province also announced plans to expand inspection efforts to farms, greenhouses and other agricultural operations.

Mar 3: Even with case numbers coming down, Ontario is keeping up the COVID enforcement pressure with the hiring of over 100 new OHS inspectors who will complete condensed training and start making field visits by mid-April. In 2021, Ontario officers have carried out 13,374 workplace inspections and issued 373 tickets and 9,480 orders, including 15 stop-work orders. After concentrating on big box retail, the current focus is on small businesses with fewer than 25 workers.

Apr 15: Ontario launched a new workplace safety inspection blitz targeting sectors and regions hardest hit by COVID, including construction sites, big box stores, warehouses, food processors and manufacturers in the Ottawa, Toronto and York Regions. OHS and other enforcement officers have carried out over 20,300 COVID-related workplace inspections since the start of 2021. **Results:** over 500 tickets and 15,600 safety orders issued, including 26 stop work orders, for COVID violations.

COVID-19 LEAVE

Dec 17: For the second time, Ontario extended the new temporary infectious disease emergency leave that was due to end on January 2, to July 3, 2021. Being on IDEL is effectively the same as being on temporary layoff. The extension is designed to save jobs by allowing employers to keep or place

employees who might otherwise have to be laid off or have their hours slashed on IDEL due to the pandemic for another 6 months.

July 2: That's the last day you can treat employees on temporary layoff due to COVID as being on unpaid temporary infectious disease emergency leave. Unless Ontario extends the deadline again (as it has twice before), employers will have to make a decision about whether to recall or permanently terminate such employees by July 3, 2021.

COVID-19 LIABILITY

Nov 20: The Ontario Assembly passed [Bill 218](#) barring lawsuits by third persons against businesses and workers for COVID infection or exposure, retroactive to March 17, 2020, as long as those would-be defendants acted or "made a good faith effort" to act in accordance with coronavirus public health guidance and applicable laws. **Exception:** The immunity doesn't apply if the alleged act or omission causing exposure or infection amounts to gross negligence. The point of the legislation, which other jurisdictions will likely consider, is to prevent a flood of damages lawsuits by persons blaming businesses, hospitals, organizations and workers for their COVID-19 infections.

COVID-19 PAID LEAVE

Apr 29: Royal Assent for [Bill 284](#), which temporarily gives employees 3 days' paid leave at regular wages, not counting overtime, up to \$200 per day for work missed due to COVID,

such as getting vaccinated, self-isolation or caring for a sick family member, retroactive to April 19, 2021 and ending on September 25, 2021. The new ESA leave time and pay count against any of the employee's existing paid sick leave allotment. Employers can apply to the Ontario WSIB for reimbursement for amounts paid to employees.

COVID-19 REPORTING

Jan 4: New restrictions require employers to notify Toronto Public Health immediately when 2 or more employees have the coronavirus and designate a contact person to work with the agency and implement any required measures at the workplace. Employers must also ensure that all employees are aware of any pay or benefits to which they're entitled in case COVID makes it impossible for them to work as usual.

COVID-19 RESPONSE

Nov 17: Ontario employers seeking information about the status of COVID business restrictions in their area will now have to refer to the new provincial response framework which assigns each public health unit region to one of 5 levels—Green, Yellow, Orange, Red, Lockdown—each week based on cases in the region. The region level determines the required public health and workplace safety measures for businesses with sector-specific requirements for retail, restaurants, bars, personal services and other sectors. Currently, Toronto and the Peel region are in Lockdown.

Jan 14: A new order took effect requiring people in Ontario to stay home except for grocery shopping, medical appointments and other essential purposes. Over the coming months, the province will also furnish up 300,000 rapid, point-of-care COVID tests per week at workplaces in key sectors like manufacturing, warehousing, supply chain and food processing.

Feb 8: Ontario extended Stay-at-Home orders for most regions through at least Feb. 22. In-person retail shopping is permitted in Grey zones subject to 25% capacity limits. To prevent the spread of new COVID variants, Ontario is also now requiring on-arrival testing for international travellers at Toronto Pearson Airport and land border crossings.

Apr 23: New orders require businesses in Toronto and the Peel Region to notify public health authorities immediately if they become aware of 5 or more COVID infections in the workplace over a 14-day calendar period. Health authorities can then order a partial or full shutdown of the workplace. Licensed child care programs, schools and health providers are exempt from the orders.

Jun 11: Just over a week after the stay-at-home order expired, Step 1 of the Ontario reopening plan took effect allowing for resumption of:

- Outdoor gatherings and events with up to 10 people
- Outdoor dining for up to 4 people

- Essential retail at 25% capacity and non-essential retail at 15% capacity
- Day camps for children.

COVID-19 SCREENING

Jun 9: Ontario has delivered over 12.3 million rapid antigen test kits to over 2,600 work sites across the province for use in screening workers and other would-be entrants to the workplace for COVID.

COVID-19 TESTING

May 7: Ontario and the federal government launched an expanded COVID-19 Rapid Screening Initiative offering free rapid coronavirus antigen tests that small and medium-sized businesses across the province can use as part of a workplace screening program. Although antigen tests are less accurate than molecular tests that must be performed at an offsite lab, they produce fairly reliable results at the point of care in about 20 minutes or less, which makes them suitable for screening, as opposed to diagnostic purposes.

DECLARED EMERGENCY LEAVE

Feb 10: Now that Ontario's second provincial COVID emergency has ended, employees may no longer take declared emergency leave under the ESA. However, unpaid leave is still available to those who are sick with or in self-isolation due to COVID or caring for family members affected by the illness or related school and daycare closures.

DOMESTIC VIOLENCE

Apr 14: The Assembly defeated Private Member [Bill 274](#), an Ontario version of "Clare's Law" that would have allowed individuals to seek access to private information about their intimate partners and whether they have a history of intimate partner violence. The Bill would have also given the police authority to provide such information to a person at risk even if the person didn't apply for it.

ELECTRICAL SAFETY

May 20: Ontario launched a new \$5.3 million program that will enable 500 electrical workers in the province to upgrade their training, giving them a competitive edge and boosting homegrown talent. Electrical contractor Spark Power will provide free training and create scholarships to encourage youth to pursue careers in the electrical professions.

FALL PROTECTION

Nov 20: Comments closed on the Ontario MOL's [proposal](#) to change the Working at Heights (WAH) training rules to recognize Fall Protection training approved by WorkplaceNL as an acceptable alternative to WAH training approved by the Ontario Chief Prevention Officer. The MOL also wants to expand the current WAH training exemption for the automobile sector to workplaces owned by the same manufacturer or assembler to avoid duplicative training costs.

FIRST AID

Feb 22: Comments closed on an [MOL proposal](#) to overhaul current first aid regulations. Highlights:

- Create new OHS first aid regulation (the current rules are in the Workers Comp regulations)
- Transfer first aid enforcement responsibility from WSIB to MOL
- Authorize Chief Prevention Officer to create new first aid training standards.

FORESTRY SAFETY

Feb 12: That's the last day for small and medium-sized forestry sector operations in Ontario (fewer than 500 employees) [to apply](#) for government reimbursement for the extra workplace safety costs they incurred as a result of the COVID pandemic between April 1 and December 31, 2020. Eligible costs include PPE, sanitizing stations, extra training, enhanced cleaning and self-isolation facilities.

HEALTH CHECKS

Nov 17: Pre-entry COVID screening is no longer enough. New Ontario emergency orders require employers to ensure that all workers do a daily health check on themselves before letting them enter the workplace. Acceptable methods include having workers complete an online health check form and verbal checks coupled with written records showing verbal confirmation was given. However, employers aren't allowed to ask or record specific questions

about a worker's health. If workers don't provide adequate confirmation, you can't let them enter.

INCIDENT REPORTING

Feb 12: Comments closed on the MOL's [new proposal](#) to simplify OHS incident reporting requirements. Specifically, the MOL wants to streamline the incident reporting rules currently listed in 8 OHS regulations (construction, industrial establishments, oil and gas, window cleaning, X-ray safety, healthcare, mining and diving operations) into a single, uniform reporting regulation covering all sectors and reporting situations.

Jun 8: The MOL published a new [OHS Regulation](#) setting out a streamlined procedure for reporting workplace fatalities, critical injuries, occupational illnesses and other incidents. Unlike the previous regulations which differed by industry, the new reporting rules will apply to all employers and workplaces when they take effect on July 1, 2021.

Jul 1: The new [OHS Regulation](#) setting out a streamlined procedure for reporting workplace fatalities, critical injuries, occupational illnesses and other incidents officially took effect. Unlike the previous regulations which differed by industry and were listed in the standard for that particular industry, the new reporting rules are located in a single OHS regulation that applies to all employers and workplaces.

INFECTION CONTROL

Jan 5: The MOL issued [new guidance](#) recommending precautions that employers who are still open should take to keep COVID-19 from spreading to workers during meal and break periods.

JHSC TRAINING

Nov 1: Reminder: JHSC members' Part 1, Part 2 and Refresher certification training can now be completed online. The MOL implemented the new policy in response to the COVID pandemic and hasn't indicated whether it will remain in place after the public health emergency.

MINING SAFETY

Feb 3: The MOL kicked off a new inspection campaign targeting electric battery vehicles and diesel mobile equipment use and maintenance at mining sites. The initiative, which runs through March 31, will focus on:

- Risk assessment for electric vehicle battery fires
- Charging
- Fire suppression systems
- LED lights
- Safe work procedures
- Operator and worker awareness.

Jan 1: New Working at Heights (WAH) [training rules](#) recognize Fall Protection training approved by WorkplaceNL, which is pretty rigorous, as an acceptable alternative to WAH training approved by the Ontario Chief Prevention

Officer. To avoid the need for duplicative training, the current WAH training exemption for the automobile sector has also been expanded to include workplaces owned by the same manufacturer or assembler.

OELs

Apr 21: The MOL proposed revised OHS Occupational Exposure Limits for silica and hydrogen sulfides (under the *Control of Exposure to Biological or Chemical Agents* (Reg. 833) and *Designated Substances* (O. Reg. 490/09) to align with updated ACGIH guidelines. In addition, the MOL is proposing to adopt the 2019 version of CSA Z180.1:19, *Compressed breathing air and systems* for the above regulations and *Asbestos on Construction Projects* (O. Reg. 278/05) regulation.

Jul 2: The MOL closed public consultations on revised OELs in Designated Substances, Control of Exposure to Biological Agents and Asbestos on Construction Projects regulations based on ACGIH recommendations for 2018 and 2019, including with regard to:

- Silica
- Hydrogen sulfide
- Compressed breathing air.

OHS ENFORCEMENT

Nov 2: The Ontario MOL launched a new inspection blitz targeting occupational diseases across the Industrial, Construction, Mining and Healthcare Sectors. Inspectors of industrial workplaces will focus on respiratory hazards related to silica while asbestos-related diseases and

silicosis will be the target of inspections at construction sites.

PAID SICK LEAVE

Jun 9: Employers can [now apply to](#) the WSIB for reimbursement of up to \$200 per day for up to 3 days in paid COVID infectious disease emergency leave covering missed time for:

- Going for a COVID test or vaccine
- Staying home to wait for COVID test results or due to vaccination side effects
- Being sick with or getting medical treatment related to COVID
- Being advised to self-isolate by an employer, medical practitioner or other authority
- Providing care or support to certain relatives for COVID reasons.

PERSONAL EMERGENCY LEAVE

Feb 17: First Reading for [Bill 247](#), which would replace sick, family responsibility and bereavement leave with PEL, up to 10 days of which would be paid. Employers will still be able to require employees to provide evidence of their entitlement to a leave other than doctors' notes. The new PEL proposal, which has drawn criticism from organized labour for scaling back more expansive leave provisions enacted by the Liberal government, has been in the works since the pandemic.

PRE-START REVIEW

Jan 21: The MOL [proposed revisions](#) to streamline PSR requirements that factories covered by the *OHS Industrial Establishments Regulations* must perform before using certain types of machinery for the first time. In addition to eliminating the need for a professional engineer to affix his/her seal on the PSR report, the proposal would make significant changes to the Table in Section 7 of the Regulation that lists the types of PSR required and exemptions for particular types of machinery, protective elements and processes. and in factories Deadline to comment: March 11, 2021.

PRIVACY

Jul 7: Ontario is investing \$2 million to expand closed-circuit television systems at local communities across the province to monitor and detect gang and other criminal activity.

TEMPORARY LAYOFF

Jun 8: The MOL extended the maximum period during which employers affected by COVID can put employees they'd otherwise have laid off (or cut the work hours or pay of) on IDEL to September 25, 2021. The temporary regulation also bars employees who are put on IDEL from bringing an ESA constructive dismissal lawsuit.

TOWER CRANES

Apr 26: The MOL released the results of its recent province-wide

inspection initiative targeting tower crane safety at construction sites. Results: 161 workplaces inspected and 911 orders issued, including 118 stop work orders. Most frequent violations:

- Failure to ensure cranes were maintained in safe condition in accordance with operating manual (115 orders)
- Deficiencies with pre-erection inspections and tests regarding the structural integrity of the crane (113 orders)
- Failure to protect workers from falling (103 orders).

TRAFFIC SAFETY

Mar 2: Ontario created a new Joint Forces Operation team to investigate and recommend rules to deal with the growing problem of violence in the towing industry. The province also launched a pilot program to create restricted tow zones on designated sections of provincial highways to help clear highways faster and more safely.

May 7: New legislation ([Bill 282](#)) to protect pedestrians and highway workers by cracking down on aggressive driving and street racing is working its way through the Assembly on its way to sure passage.

Jun 3: Ontario passed [Bill 282](#) to protect pedestrians and highway workers by providing tough new penalties for aggressive driving and street racing.

WORKERS COMP

Nov 6: Ontario is providing over \$600,000 in funding to support efforts of the Office of the Worker Adviser and Office of the Employer Adviser to make it easier non-union workers and small businesses navigate the often confusing WSIB system in bringing and appealing workers comp claims.

Dec 8: Newly tabled [Bill 238](#) would let the government adopt special premium rate calculation regulations to protect employers from unexpected increases in WSIB premiums during the 2021 calendar year, while maintaining the increase to the maximum earnings cap for worker benefits from \$95,400 to \$102,800.

Jan 1: Subclass G1, building construction, will separate into 2 subclasses for rate-setting purposes. Residential construction activities will remain classified as subclass G1 and non-residential construction activities will move into a newly created subclass G6. Reporting and payment responsibilities will remain the same for all businesses remaining in G1 residential building construction and moving to G6 non-residential building construction.

Jan 1: After last year's 17% rate cut, the WSIB is keeping average premiums for Schedule 1 employers at \$1.35 per \$100 assessable payroll. Maximum Insurable Earnings for 2021 are increasing from \$95,400 to \$102,800.

Jan 1: The WSIB will apply a 1.0%

cost-of-living adjustment to workers comp benefits in 2021, based on the Consumer Price Index.

Mar 9: The WSIB will now consider the claims experience of Schedule 2 organizations who opt to transfer to Schedule 1 in calculating their premiums. Previously, employers who switched from Schedule 2 to Schedule 1 were treated like new employers and assigned the Schedule 1 class premium rate without consideration of their Schedule 2 claims experience.

Apr 13: Newly passed Bill 238 imposes new limits on the WSIB's authority to increase premiums, while maintaining an increase to the maximum earnings cap for worker benefits.

Apr 28: Comments closed on a [WSIB proposal](#) to make it mandatory for employers that commonly employ personal support workers (PSWs) and developmental support workers (DSWs) to get workers comp coverage, if they aren't already currently required to do so.

Jun 25: As of March 31, 2021, the WSIB has received 8,114 workplace COVID exposure incident reports and accepted 26,608 COVID claims, including 46 fatalities. The sectors with the most accepted claims:

- Nursing and residential care: 8,102
- Hospitals: 3,163
- Schedule 2 employers: 3,045.

WORKPLACE HARASSMENT

Mar 8: Newly tabled [Bill 260](#), aka, *Stopping Harassment and Abuse by Local Leaders Act, 2021*, would require municipalities and local boards to develop new workplace codes of conduct and strengthen accountability of council members who engage in harassment or discrimination and enable them to go to court to strip members of their seat for noncompliance.

Apr 15: Ontario launched [online consultations](#) on what should be done to combat the problem of harassment in municipal workplaces. So far at least, municipal council members have done a lousy job of practicing what they preach to private sector employers about the need for ensuring a respectful workplace. Deadline to comment: July 15

WORKPLACE SAFETY

Mar 11: After an extension, the MOL ended public comments on its [proposal](#) to overhaul the current WSIB first aid regulations. Highlights:

- Create new OHS first aid regulation (the current rules are in the Workers Comp regulations)
- Transfer first aid enforcement responsibility from WSIB to MOL
- Authorize Chief Prevention Officer to create new first aid training standards.

Mar 11: Comments ended on MOL [proposed revisions](#) to streamline OHS Pre-Start Review requirements that factories covered by the *Industrial Establishments*

Regulations must perform before using certain types of machinery for the first time. In addition to eliminating the need for a professional engineer to affix his/her seal on the PSR report, the proposal would make significant changes to the Table in Section 7 of the Regulation that lists the types of PSR required and exemptions for particular types of machinery, protective elements and processes.

Apr 23: Implementing COVID-19 precautions in workplace lunchrooms is now not simply recommended but required. Such precautions include:

- Use of face masks with removal allowed only for eating and drinking, but not while waiting for the microwave
- Limits on number of people allowed to be in meal and break rooms at one time
- Frequent cleaning and disinfection of meal and break rooms.

WORKPLACE VIOLENCE

Nov 18: Legislation ([Bill 231, Protecting Ontarians by Enhancing Gas Station Safety to Prevent Gas and Dash Act, 2020](#)) adding a new OHS duty of gas station employers to make customers prepay and provide safety training to workers involved in the sale of gasoline is through Second Reading and likely to pass.

Feb 16: From now through March 31, MOL inspectors will be visiting workplaces in the educational sector to ensure they're complying with

OHS workplace violence laws. Specifically, they'll be checking to see whether employers are:

- Providing workers in classrooms, including substitute teachers and other occasional workers information about workplace violence risks
- Training personnel how to use PPE and call for immediate help
- Implementing measures to prevent violence during "transitions," such as moving between classrooms, as well as during fire drills, field trips and other non-routine activities.

Jul 15: That's the deadline to participate in [online consultations](#) about what should be done to combat the problem of harassment in municipal workplaces. So far at least, municipal council members have done a lousy job of practicing what they preach to private sector employers about the need for ensuring a respectful workplace.

WSIB

Jan 29: The WSIB published its [2021 Policy Agenda](#). Key items include collaborating with the MOL to develop an Occupational Disease Strategy and reviewing current workers comp policies on:

- Occupational cancer
- Coverage of medical cannabis
- Expanded compulsory coverage in the construction sector
- Determining average earnings for purposes of making periodic payments for survivors.

Jun 15: The WSIB issued over \$3.2 million in Health and Safety Excellence program rebates to more than 200 businesses that voluntarily implemented OHS program improvements in June, the largest quarterly rebate payout.

CASES

JUST WHAT WERE THOSE WORKERS IN THE PARKING LOT SMOKING WHILE ON BREAK?

A 30-second video shot on a digital camera clearly showed that the 2 workers were smoking something in the furniture plant parking lot while on break. The workers claimed it was a cigarette. But witnesses and the roach clip found nearby suggested it was marijuana. And the Ontario arbitrator found the eyewitnesses more credible than the

workers. **Result:** The employer had just cause to discipline for violating the workplace drug and alcohol policy. And the 5-week suspensions each worker received was a reasonable penalty [[Ridgewood Industries v United Food & Commercial Workers Canada Local 175](#), 2020 CanLII 82092 (ON LA), October 26, 2020].

EXCAVATOR KILLS CONSTRUCTION WORKER RESULTING IN \$150,000 FINE TO CONSTRUCTOR

During pipe laying work, the operator of a hydraulic excavator at grade had a partially obstructed view of the signaler—all he could see were the hand signals. That may have been the reason he hit the signaler, pinning him between the bucket and catch basin with fatal results. The constructor for the project was convicted of failing to ensure that the signaler was in full view of the excavator operator and fined \$150,000 [*Graham Bros. Construction Ltd.*, [Government News Release](#), November 12, 2020].

MEAT PLANT FINED \$50,000 FOR TEMP'S MACHINE INJURY

A temp working at a meat packing plant suffered serious injuries after removing interlocking guards from the front of the hot dog loader/packer machine he was cleaning to remove excess plastic. The plant was fined \$50,000 after pleading guilty to failing to ensure that the machine was locked-out when the worker was removed the excess plastic [*Erie Meat Products Ltd.*, [Government News Release](#), November 12, 2020].

POTENTIAL OF DAMAGE TO REPUTATION NOT JUST CAUSE TO FIRE COP FOR OFF-DUTY ASSAULT

A Toronto Police Services parking officer was charged with assaulting

her domestic partner. Although the charges were later dropped, the TPS did its own internal investigation and decided to fire the officer to stave off potential harm to its public reputation. But the arbitrator said there was no just cause to terminate and reinstated the officer. There was no evidence that TPS suffered any **actual** harm to its reputation; moreover, TPS overlooked the role that the officer's alcohol consumption might have played in the incident, especially since it had previously suspended her 10 days for impaired driving. TPS appealed but the Ontario court said the arbitrator's ruling was perfectly reasonable and that there was no reason to re-weigh the evidence [*Toronto Police Services Board v. Toronto Police Association et al.*, 2020 ONSC 6923 (CanLII), November 13, 2020].

COURT SHUTS DOWN RESTAURANT FOR DEFYING COVID EMERGENCY RULES

"Enough is enough – we're opening. . . for dine-in service." That was the defiant message an Etibicoke barbecue restaurant posted on its Instagram account the day Toronto entered emergency Stage 1 limiting restaurants to take-out, drive through and delivery services. True to its word, the restaurant opened for dine-in the very next day and the 2 days after that despite receiving over 2 dozen citations. Finally, the owner was arrested and the Ontario Superior Court issued the first restraining order against a business for violating the province's COVID-19 emergency decrees. Noting that the owner didn't contend the decrees

were unconstitutional or invalid nor offer any defence for violating them, the court also order the owner to reimburse the Crown for the \$20,000 in legal expenses it incurred in bringing the case [[Her Majesty the Queen in Right of Ontario v. Adamson Barbecue Limited](#), 2020 ONSC 7679 (CanLII), December 11, 2020].

AIRCRAFT MANUFACTURER FINED \$60,000 FOR FAILING TO ENSURE SAFE LIFTING

Aircraft plant workers using a single-sling choker hitch to move and flip a 22-foot-long wing component weighing 2,000 pounds lost control, causing the component to slip free and fall to the ground pinning one of the crew members. The worker survived but suffered serious injuries. The employer pleaded guilty to one OHS violation and was hit with a fine of \$60,000 plus a 25% surcharge [[Cyclone Manufacturing Incorporated, Govt. Press Release](#), December 1, 2020].

ARBITRATOR GRUDGINGLY REINSTATES WORKER FIRED FOR VIOLATING COVID PROTOCOLS

A hospital transport employee refused to transfer COVID-19 testing swabs unless he was given scrubs to wear. His managers sat him down and educated him about how the virus spreads and explain that scrubs were unnecessary because the swabs were placed in tubes and sealed in plastic bags. A few weeks later, an article appeared in a local media outlet citing an unnamed employee who contended that the

hospital made workers exposed to COVID do their jobs without scrubs. Considering the quotes as totally unfair and out of context, the hospital did an internal investigation and concluded that they must have come from the transport employee and suspended him without pay. A few months later, it fired him for violating mask and other COVID protocols. While acknowledging the employee’s “ongoing pattern of disrespect for the Hospital’s authority to manage the workplace during an extremely difficult time,” the Ontario arbitrator reluctantly reinstated him without loss of seniority (but not with pay), provided that he engage in no further discipline-worthy conduct for the next 18 months [[Trillium Health Partners v CUPE Local 5180](#), 2021 CanLII 127 (ON LA), January 7, 2021].

WORKER’S DESTRUCTION OF CONCRETE WALL WAS DELIBERATE, NOT ACCIDENTAL

A worker knocked over the concrete wall of a bunker with the bucket of the front-end loader he was operating. The employer claimed he did it on purpose. In the resulting he-said/he-said case, the Ontario arbitrator found the worker’s denial less credible and upheld termination. What made the employer’s story more believable was the worker’s disciplinary record and documented pattern of refusing to accept authority and the fact that one blow wouldn’t be enough and that it would require repeated blows to destroy the wall. Moreover, he had stubbornly tried to keep the employer from erecting the bunkers on supposed safety grounds while

serving as a worker member of the worksite JHSC [[Regional Municipality of Durham v CUPE, Local 1785](#), 2021 CanLII 1348 (ON LA), January 7, 2021].

AUTO PLANT FINED \$225,000 FOR PPE VIOLATION

An automotive plant worker not wearing PPE suffered serious burns in an explosion that occurred after he opened the door to a furnace. The employer, which had a track record of OHS offences, pled guilty to failing to ensure the worker used required skin protection and was fined \$225,000 [*Linamar Corporation operating as Linamar Gear*, [Govt. Press Release](#), December 16, 2020].

TRAILER PLANT FINED \$150,000 FOR WORKER'S ELECTROCUTION DEATH

A plant worker on a scissor lift was electrocuted after the aluminum pole he was using made contact with live 16,000-volt overhead powerlines. The employer was fined \$150,000 + a 25% surcharge after pleading guilty of one OHS offence for failing to protect the victim [2055495 *Ontario Inc. operating as Miska Trailer Factory*, [Govt. Press Release](#), December 16, 2020].

ARBITRATOR UPHOLDS MANDATORY COVID-19 TESTING FOR RETIREMENT HOME WORKERS

An important new case confirms what many suspected: Employers may require workers to undergo

COVID-19 testing, particularly at nursing, hospital and other elderly care settings. The case began when a retirement home unilaterally imposed a new policy requiring staff to be tested every 2 weeks. The union objected, contending the policy was unnecessary and privacy-invasive and urging the Ontario arbitrator to evaluate it like a drug and alcohol testing policy. But to the arbitrator, that would be an apples-to-oranges comparison. The stakes were much more deadly with COVID. While less vulnerable than nursing home residents, people living in retirement communities are still elderly and at great danger if they catch coronavirus. Besides, the arbitrator reasoned, a positive COVID test isn't "culpable conduct" subject to discipline the way a positive drug/alcohol test is [*Christian Labour Association of Canada v. Caressant Care Nursing & Retirement Homes* (D. Randall), December 9, 2020 (unreported)].

CONSTRUCTION FIRM FINED \$200,000 FOR SUPERVISOR'S DEATH

A supervisor operating a mini-excavator in an underground pipe got killed when the vehicle tipped over. The supervisor might have survived had the vehicle's tip-over-protection-system (TOPS) been in place as required by OHS regulations, he might have survived. Unfortunately, somebody removed the TOPS before the mini-excavator was lowered into the pipe. The employer pleaded guilty to failing to ensure that the vehicle had a cab or screen and was fined \$200,000, a

high amount that took into account the fact that this was its second OHS offence. In 2013, the employer was socked with a \$170,000 fine after pleading guilty to an OHS violation resulting in the death of a young worker [*McNally Construction*, [Govt. News Release](#), February 12, 2021].

ELECTRIC COMPANY’S FAILURE TO GUARD MACHINE PINCH POINT RESULTS IN \$90,000 FINE

A worker training a co-worker how to operate a Former #5 four-piston hydraulic press suffered serious injuries after getting caught in a pinch point between a moving die and its housing. The machine was fitted with a light curtain guard on its east side but not its west side where the incident occurred. Rather than risk a trial, the employer pled guilty to an OHS violation for failing to guard the pinch point and was fined \$90,000 [*Cogent Power Inc.*, [Govt. News Release](#), February 10, 2021].

MAKING DRIVERS WEAR BADGE DISPLAYING ID NUMBER ISN’T A PRIVACY VIOLATION

The union cried foul when the Toronto Transit Commission (TTC) implemented a new VISION bus management system requiring drivers to wear badges displaying their operator ID number. The Ontario arbitrator agreed that TTC management didn’t have carte blanche discretion to implement any management system it saw fit and that it had to respect employees’ right to consent to disclosure of their

“personal information” under privacy laws. But, the arbitrator reasoned, operator ID numbers didn’t count as “personal information” because passengers couldn’t use the numbers, without other information, to identify the individual driver associated with the number. And since the privacy protections didn’t apply, it tossed the grievance [*Toronto Transit Commission v Amalgamated Transit Union Local 113*, 2021 CanLII 2097 (ON LA), January 18, 2021].

EMPLOYER THAT DOESN’T HAVE RIGHT SAFETY GEAR CAN’T BLAME VIOLATION ON WORKER

A construction worker suffered partial paralysis after falling from a 10-foot ladder. The contractor and supervisor were convicted of an OHS violation for failing to furnish a scaffold to ensure the work was carried out safely. The evidence showed that workers using ladders would have to stand on at least the third highest rung to perform some of the job tasks. The defendants claimed that the incident was unforeseeable and that the victim caused the fall by standing on the top rung. But the Ontario court shot down their due diligence defence and upheld the convictions. Worker conduct can factor into due diligence but only when all reasonable steps are taken to address a hazard and the worker undoes those careful safety measures. But the defendants didn’t do that. By furnishing 10-foot ladders instead of scaffolding, they exposed workers to fall hazards [*Ontario (Ministry of Labour) v. GMJ*

[Electric Inc.](#), 2021 ONCJ 102 (CanLII), February 22, 2021].

WORKERS COMP BARS CONTRACTOR’S WORKER NEGLIGENCE LAWSUIT AGAINST PLANT OWNER

A poultry worker hired by a contractor to work at a plant owned by another company fell in the facility’s parking lot on her way to work. She sued the owner for negligence but the owner claimed the lawsuit was barred by workers comp because the victim was actually its employee. The WSIB agreed. Even though the contractor hired her and paid her wages, the owner was the employer “in substance” for purposes of workers comp because it exercised “substantial control” over her work. And since the owner was her employer, the injury was work-related and the victim’s recourse was to file a workers comp claim rather than sue for damages. The Ontario court upheld the WSIB’s ruling and nixed the appeal [[Chen v. Workplace Safety and Insurance Appeals Tribunal](#), 2021 ONSC 1149 (CanLII), February 16, 2021].

CONTRACTOR FINED \$210,000 FOR WORKER’S DEATH DURING LOADING OPERATION

A wooden telephone pole being loaded onto a trailer rolled off the forklift and onto a worker ending his life. MOL inspectors determined that the forks weren’t spread apart as far as possible and that the pole wasn’t secured in any way to the forks. The

employer took its chances on a trial but was convicted of 2 OHS violations and fined \$210,000 plus a 25% victim’s surcharge [[R.M. Bélanger Limited, Govt. Press Release](#), February 26, 2021].

SUPERVISOR’S ROLL-OVER DEATH COSTS EMPLOYER \$250,000 IN PENALTIES

A mini-excavator was originally equipped with a tip over protection system (TOPS); unfortunately, somebody removed the TOPS so the mini-excavator could squeeze into an underground pipe. So, when it later tipped over, the supervisor operating the machine inside the pipe was crushed to death. The victim’s employer, which had been convicted and fined \$170,000 for another fatality in 2013, pleaded guilty to 2 OHS violations and was hit with total penalties of \$250,000, counting the 25% surcharge [[McNally Construction Inc., Govt. Press Release](#), February 12, 2021].

LIFTING WEIGHTS AT GYM WHILE INJURED LAST STRAW FOR TROUBLESOME WORKER

The central accusation against a hospital worker fired for a series of disciplinary infractions was getting caught lifting weights at the gym while he was on modified duties with a work-related shoulder injury. The worker admitted that he was at the gym where a co-worker spotted him but vigorously denied that he was lifting 50-lb. dumb bells over his head. And so it came down to credibility and the fact that the

Ontario arbitrator found the witness' story more believable than the worker's denial, citing the latter's recurring pattern of resisting assignments and accusing supervisors and co-workers of discriminating against him for being gay even though there was no evidence they knew or cared about his sexual orientation. **Result:** The employer had just cause to terminate [[International Union of Operating Engineers v North York General Hospital](#), 2021 CanLII 18894 (ON LA), March 15, 2021].

FALLING ASLEEP ON JOB IS NOT GROUNDS FOR DISCIPLINE BUT NOT TERMINATION

Video surveillance film showed a mattress plant mold operator in a posture strongly suggesting he was literally asleep at the switch. The operator insisted he was just relaxing and denied that he was asleep. It was an honest and sincere denial, the Ontario arbitrator found; but it was also false since he was clearly sleeping. Being honest is no substitute for being alert and being able to realize when you're asleep. Yet, termination was an overreaction, the arbitrator continued, for a non-safety-sensitive employee with 9 years of discipline-free service. But while finding that the dismissal was wrongful, the arbitrator refused to reinstate the operator given his unsuitability for the job and the fact that the plant could no longer trust him. So, the operator would have to settle for +11 weeks' notice and 15% in top-up and fringe benefits [[VPC Group Inc. v Unifor Canada Local 112](#), 2021 CanLII 7424 (ON LA),

February 1, 2021].

OK TO CHARGE CONSTRUCTOR AS "EMPLOYER" FOR OHS VIOLATION, SAYS TOP COURT

A case with major liability implications for companies that act as "constructors" at multi-employer work sites began tragically when a road grader at a construction site struck and killed a pedestrian crossing the intersection. The Crown charged the city with failure, as both an employer and the constructor of the site, with failing to ensure that a signaler was in place. The lower court found that the city was neither an employer nor a constructor and dismissed the charges. But the Ontario Court of Appeal reversed. In contracting with the companies that carried out the work and deploying its own inspectors to oversee it, the city was "virtually in the position of an insurer who must" ensure compliance with all OHS requirements before the work begins, reasoned the high Court. So, the case would have to go back down to trial to determine whether the city exercised due diligence [[Ontario \(Labour\) v. Sudbury \(City\)](#), 2021 ONCA 252 (CanLII), April 23, 2021].

SPEEDING PAST STOPPED SCHOOL BUS IS JUST CAUSE TO TERMINATE

A heavy truck driven by an Apprentice Powerline Technician "blew by" a yellow school bus that had stopped to pick up a young girl. Witnesses, including one of the girl's

parents, were appalled and notified the APT's employer, ultimately resulting in his termination. The Ontario arbitrator ruled that the employer had just cause to terminate and tossed the union's grievance. Rather than apologizing for committing a serious traffic offence that endangered children, the APT falsely denied having seen the bus, even though its red stop lights were flashing and its horn was blasting. This behaviour coupled with the 3 speeding tickets he had racked up over the last 5 years justified the employer's conclusion that it could no longer trust the APT to work safely [[Power Workers' Union v Halton Hills Hydro](#), 2021 CanLII 33012 (ON LA), April 19, 2021].

TERMINATION IS TOO HARSH A PENALTY FOR OFF-DUTY VIOLENCE

Terminating employees for off-duty violence is generally easier when they're wearing their company uniform when they commit it. The case is even more compelling when the whole incident is caught on security camera. But certain intervening factors saved this particular transit worker who was caught on camera slugging a store security guard after work but while still in his TTC uniform. First was the fact that the guard clearly provoked the employee. Of equal importance was the total lack of credibility of the witnesses who claimed they saw him steal merchandise from the store. And without proof of theft, all that remained of TTC's disciplinary case was a provoked act of violence committed off-duty, which the Ontario

arbitrator ruled warranted only a one-week suspension [[Toronto Transit Commission v Amalgamated Transit Union Local 113](#), 2021 CanLII

BAKERY COMPANY FINED \$700,000 FOR SEPARATE TEMP WORKER FATALITIES

The first fatality took place when a tractor-trailer backed into a temp who had left his post on the bread assembly line to smoke a cigarette in the loading area. Although marked by DANGER signs, there were no warnings about the danger of vehicles operating in reverse. **Fine amount:** \$325,000. The second death happened 11 months later when a temporary sanitation worker got pinned between an autoloader and infeed conveyor that should have been guarded to bar access to potential pinch points. **Fine amount:** \$375,000 [[2168587 Ontario Ltd., operating as Upper Crust](#), [MOL Press Release](#), June 4, 2021].

FATAL TRAFFIC ACCIDENT COSTS BUS DRIVER HIS DRIVING POSITION BUT NOT HIS JOB

A Toronto Transit Commission bus driver got fired after running over a 14-year-old passenger right after she exited the bus. Adding to the gut-wrenching was that the driver continued on without stopping, apparently unaware of what had just happened. Although criminally charged, the driver There was no dispute about the driver's responsibility. The only question was whether he deserved to lose his job.

While criminally fined for the incident, the driver didn't lose or have any restrictions placed on his licence. But he did have a disciplinary record for careless driving and was uncooperative in the investigation. At the same time, the incident was a momentarily lapse and the driver expressed remorse. So, at the end of the day, the Ontario arbitrator concluded that while he was a terrible driver, he was a good employee and could keep working for TTC in a position that didn't involve any driving [[Toronto Transit Commission v Amalgamated Transit Union Local 113](#), 2021 CanLII 44947 (ON LA), May 27, 2021].

CRIMINAL WEAPONS POSSESSION CHARGES DOESN'T JUSTIFY WORKER'S SUSPENSION

A hog fuel operator was suspended after police raided his home and seized a cache of 27 firearms, including a sub-machine gun, three semi-automatic rifles, two shotguns, a stun gun, a rifle and three pistols. The operator was ultimately charged with possession of 4 unlicensed firearms. And the detective agency the company hired to investigate reported that the operator had no criminal record and his limited social media activity was relatively innocuous. So, when the company suspended him again, the union cried foul. The Ontario arbitrator reinstated the operator pending resolution of the criminal charges. The suspension could be restored if the operator were to be convicted. In the meantime, he was entitled to the presumption of innocence. Based on the detective report, it didn't look like

he was the type to "go postal." And if he did, having the extra 4 unlicensed guns wouldn't do much to add to the mayhem given the enormous supply of firearms he already possessed legally [[Domtar Inc. v Unifor, Espanola Local 74](#), 2021 CanLII 42452 (ON LA), May 12, 2021].

MANDATORY USE OF TIME TRACKING APP VIOLATES EMPLOYEES' PRIVACY

A tunnel engineering firm unilaterally implemented a rule requiring employees to download an electronic timesheet app called ExakTime enabling the company to monitor their start, stop and break times, as well as their exact location throughout the entire shift. The company claimed the app was a necessary safety measure but the unions contended that it violated employees' privacy rights under the collective agreement. The Ontario arbitrator upheld the grievance. In its current configuration, the app was overly privacy-intrusive. "Most telling" was the employer's failure to explain why it didn't tell employees that use of the app would expose their data to Google Analytics and other third parties to which ExakTime Inc. might disclose the data. Improving timekeeping and preventing time theft didn't warrant such an intrusion; and the boost in safety was too marginal to tip the balance in favour of using the app [[International Union of Operating Engineers, Local 793 & Labourers' International Union of North America, Local 183 v Earth Boring Company Limited](#), 2021 CanLII 42419 (ON LA), May 15, 2021].

CONSTRUCTION COMPANY FINED \$175,000 FOR BRIDGE WORKER'S FATALITY

A 120-foot long temporary modular bridge being lowered into place from both ends at the same time by a pair of pump jacks collapsed on top of a worker who was sitting on the concrete landing pad below. Had the contractor followed manufacturer's instructions, the would have been well clear of the landing pad since he wasn't involved in the moving or jacking operation. The contractor was fined \$175,000 after pleading guilty of failing to ensure a safe procedure was used for jacking down a temporary bridge [*R.M. Belanger Limited*, [Govt. Press Release](#), July 9, 2021].

EMPLOYER NEED NOT GO BEYOND COVID HEALTH ORDERS TO PROTECT WORKERS

TTC implemented a mandatory face mask rule, made face shields, safety glasses and disinfectant wipes available, disinfected buses every 23 hours, installed a partial plexiglass barrier around the driver's seat and posted a "Do Not Sit" sign on the 2 seats closest to the driver. The union conceded that these were the only protections required to protect workers from COVID by public health orders but invoked the so called "precautionary principle" that when in doubt, OHS officers should err on the side of safety in seeking added protection, including total removal of the 2 closest seats and a white line marking a 2-metre barrier around the driver. But the OLRB said no, citing

the lack of evidence that these measures were essential to health and safety. Erring on the side of caution doesn't mean substituting the union's personal preference for the OHS officer's judgment, the Board reasoned [*Amalgamated Transit Union, Local 113 v Toronto Transit Commission*, 2021 CanLII

SLEEPING ON DUTY IS JUST CAUSE TO FIRE NUCLEAR PLANT SAFETY OPERATOR

A nuclear plant supervisor caught a decontamination operator tucked behind a drying machine sleeping on duty. Coupled with his record of serious safety violations, the plant fired him for just cause. The union grieved, claiming the operator was actually ill and that termination was too harsh, even if he was sleeping. The Ontario arbitrator sided with the plant. The supervisor's contention that the operator was sleeping was more credible than the operator's denial. And given the operator's safety record and the serious ramifications of sleeping when he was needed to protect workers from contamination, reinstating him would send the completely wrong safety message [*Bwxt Nuclear Energy Canada Inc. v Unifor, Local 252*, 2021 CanLII 53316 (ON LA), June 18, 2021].

PRINCE EDWARD ISLAND

LAWS & ANNOUNCEMENTS

BORDER RESTRICTIONS

Nov 24: With COVID cases surging in neighbouring provinces, PEI is suspending participation in the Atlantic Bubble for the next 2 weeks, meaning that persons entering the province from New Brunswick, Nova Scotia and Newfoundland will have to self-isolate for 14 days. However, Islanders traveling to Atlantic Canada for medical appointments or other essential purposes don't have to self-isolate if they return to PEI that same day.

Jan 6: PEI is “asking” worker who travel to the province for the day and return to New Brunswick after work to get tested for COVID at least once a week. The PEI policy is far more lenient than that of Nova Scotia, which has imposed significant restrictions on travelers from New Brunswick in response to the surging case rates in that province.

Apr 26: PEI implemented enhanced rapid COVID-testing at the borders.

New Rules: All people who are work isolating in PEI after arriving from within the Atlantic Provinces must

test negative before entering a workplace; in additional, all PEI resident registered truck drivers, rotational workers, transport crews, military and coast guard must isolate until they get their first negative test, unless they're eligible for a same day travel self-isolation exemption. Agents will issue official cards documenting test results

COVID-19 ENFORCEMENT

May 17: Since enforcement of COVID restrictions began, PEI has issued 172 tickets, including:

- 136 for failure to self-isolate
- 17 for obstructing a public health officer
- 15 for large gatherings
- 4 for illegal entry.

COVID-19 RESPONSE

Jan 6: Bucking the national trend, PEI eased its COVID restrictions. Highlights:

- 50-person cap remains on organized gatherings but now theatres and worship services

- can have up to 2 additional groups of 50
- Recreational and team sports may resume subject to 50-person cap but can also have up to 2 additional groups of 50
- Restaurants can continue to offer in-room dining until 11 p.m. subject to maximum of 10 people per table and total cap of 50 persons with availability of up to 2 additional groups of 50.

Feb 16: PEI continues to relax COVID restrictions despite the recent detection of the new B117 coronavirus variant in the province for the first time. Effective today:

- High-intensity activities at gyms and fitness facilities may resume
- Personal services may operate on a walk-in basis
- Steps will be taken to increase the number of people allowed at organized gatherings
- Staff of long-term care facilities with vaccination rates of at least 75% will be given more freedom to move between facilities.

Mar 13: After moving out of the Modified Red Level, PEI further loosened its restrictions. Through at least April 14:

- Residents may have list of 10 contacts with whom they can go out in public
- Fulltime K12 classroom learning may continue

- Post-secondary education and training may resume either online or in-person
- 50-person limit for organized gatherings
- Retail stores, gyms, fitness facilities, libraries and museums may operate
- In-room dining allowed, subject to limit of 50 people (with up to 3 additional groups of 50 if there's an operational plan), 10 per table and mandatory 12 am closing time
- Child care centres can continue to operate at full capacity.

Jun 6: PEI began Step 1 of its Moving Forward plan, allowing for:

- Outdoor and indoor personal gatherings of up to 20 people
- Restaurants with a table size of up to 20 and no mandatory closing
- Weddings and funerals up to 150 people, in cohorts of 50, hosted by a recognized business or organization
- Special occasion events like backyard parties hosted by individuals of up to 50 people.

CSA STANDARDS

Mar 6: Newly [revised OHS regulations](#) update the versions of the CSA and ANSI standards required for:

- Safe use of lasers
- Powder-actuated fastening systems
- Hoisting apparatus
- Electrical installation
- Compressed breathing air and systems
- Head, eye and face protection

- Work in compressed air.

EMERGENCY EYEWASH

Apr 20: As part of its broader “harmonization” initiative, PEI revised and clarified its rules on when employers must provide and how they must maintain shower and non-plumbed eyewash units at the workplace (under OHS Regulations Part 2: Toilet and Washing Facilities). In addition, while the requirements and standards for furnishing and maintaining eye washing equipment and changing/showering facilities haven’t changed, from now on employers and not OHS inspectors have the discretion to determine whether those facilities are needed after completing a risk assessment.

EMERGENCY SHOWERS

Mar 6: [Revised OHS regulations](#) took effect requiring employers to supply adequate changing and showering facilities where it’s “practicable” to do so. Employers must also provide emergency washing facilities in work area where a worker’s eyes or skin may be exposed to harmful or corrosive materials that may burn or irritate the eyes or skin. Required showers and fountains must be installed, tested and maintained in accordance with the relevant ANSI Standard for emergency eyewash and shower equipment.

FACE MASKS

Nov 20: Non-medical face masks and face coverings are now mandatory in all PEI indoor public

places, including workplaces. So far, PEI has managed to avoid the COVID outbreaks that its neighbours have been experiencing.

Dec 15: The PEI Human Rights Commission published a [6-page statement](#) explaining the exemptions to the mandatory mask order that took effect across the province last month.

FALL PROTECTION

Mar 6: Revised [fall protection requirements](#) under the OHS regulations took effect. Highlights:

- New definition of “full-body harness,”
- New requirements for lifejackets and personal flotation device for work involving risks of drowning
- Revised versions of CSA standards particular items of equipment must meet
- New employer duty to ensure ropes for lifelines meet specified requirements and are connected so as to ensure the least amount of slack line to limit the free fall of a worker
- New employer duty to ensure that one worker is attached to one lifeline.

Jun 28: Over the next 4 weeks, the WCB will carry out a campaign to ensure employers are complying with OHS fall protection requirements. In addition to educational outreach, the Working at Heights campaign will include targeted OHS inspections of workplaces at high risk of vertical fall injuries.

FIRST AID

Apr 20: PEI became one of the last provinces to “harmonize” its OHS first aid regulations in accordance with CSA Z1220-17, *First Aid Kits for the Workplace*. Effective March 6, 2022, employers will have to ensure that their first aid rooms meet the CSA equipment requirements and that their first aid kits are classified as:

- Type 1: Personal first aid kit
- Type 2: Basic first aid kit (small, medium and large)
- Type 3: Intermediate first aid kit (small, medium and large).

NOISE PROTECTION

Mar 6: Newly [revised OHS regulations](#) update the versions of the CSA and ANSI standards that noise exposure measuring equipment and procedures and hearing protection equipment must meet.

POWERED MOBILE EQUIPMENT

Apr 20: New rules for PME safety (under Part 33 of the OHS Regulations) took effect requiring employers to:

- Designate a worker to provide signals where the operator’s vision is obstructed
- Designate and mark walkways or use another effective method to ensure pedestrian safety in work areas where PME is operated
- Ensure proper tire pressure when PME tires are inflated.

PPE

Jan 17: PEI published proposed [revisions](#) to harmonize its OHS PPE requirements with the rules of other Canadian jurisdictions. Specifically, the new regulations would require different items of PPE to meet other nationally agreed to standards, including:

- Eye and face protection: CSA Z94.3-15
- Head protection: CSA Z94.1-15
- Foot protection: CSA Z195-14
- Hearing protection: CSAZ94.2-14
- First aid kits: CSA Z1220-17
- Personal flotation devices and life jackets: Transport Canada or an agency approved by Transport Canada.

Apr 20: Newly harmonized OHS regulations (Part 45) revise the version of the CSA standards that the following kinds of PPE and protective equipment must meet:

- Eye and face protection
- Head protection
- Foot protection
- Fall protection
- Hearing protection
- Life jackets and personal flotation devices.

Jul 9: Face masks are still encouraged but no longer mandatory in public indoor places in PEI. Masks will remain mandatory in hospital, clinics and care settings until 80% of residents are fully vaccinated. Meanwhile, restaurant servers, store staff, barbers and others facing the public who don’t know the

vaccination status of the people they serve “should” keep wearing masks, the province advises.

PRIVACY

Nov 17: Second Reading for PEI [Bill 74](#), which clarifies the rights of people who have their intimate images published on the internet or in other fora without consent the right to sue for money damages.

Dec 4: The PEI Assembly passed [Bill 74](#), which clarifies that people who have their intimate images published on the internet or in other fora without consent have the right to sue for money damages.

TRAFFIC SAFETY

Jan 25: PEI law enforcement officers can now issue tickets for speeding and other traffic offences without pulling you over at the side of the road. Deployment of the new e-ticketing technology for day-to-day use is designed to make officers safer and more efficient.

Jun 12: PEI motor carriers and drivers of commercial buses and trucks are getting a one-year grace period to comply with the new federal law taking today that requires switching from a paper daily log to an electronic logging device (ELD). The grace period is necessary to give drivers and carriers time to install and get used to the ELD, according to the province.

TRAVEL RESTRICTIONS

Jul 9: People travelling to the

province from within Atlantic Canada will no longer be tested at entry points if they have a PEI Pass showing they’ve been vaccinated. Entry point testing will continue for entrants coming from other Atlantic provinces who aren’t vaccinated and from other provinces and international locations regardless of their vaccination status.

WATER ACT

Jun 16: PEI’s newly effective Water Act imposes strict requirements for watershed management, including detailed regulations for:

- Wells construction
- Sewage disposal
- Water supply system and wastewater treatment
- Water withdrawal.

WORKERS COMP

Jan 14: Comments ended on proposed changes to the WCB’s policy ([POL-153](#)) on coverage of medical cannabis for treatment of work-related injuries. The WCB wants to add new conditions that must be met for medical cannabis to be covered:

- Worker’s health care provider must prescribe standard treatment before authorizing cannabis
- Authorizing provider must be responsible for worker’s ongoing care and assessment
- Pharmaceutical cannabinoids for chronic neuropathic pain must have been tried for at least one month.

Jan 14: Comments closed on

proposed changes to policy [POL-04](#), Worker Claim Files, that would give the WCB broader authority to disclose information from a worker's claim file to third parties.

Feb 1: The WCB finalized changes to policy ([POL-153](#)) on coverage of medical cannabis for treatment of work-related injuries. The WCB wants to add new conditions that must be met for medical cannabis to be covered:

- Worker's health care provider must prescribe standard treatment before authorizing cannabis
- Authorizing provider must be responsible for worker's ongoing care and assessment
- Pharmaceutical cannabinoids for chronic neuropathic pain must have been tried for at least one month.

Jun 21: That's the deadline to comment on [proposed changes](#) to the WCB's policy on Travel and Related Expenses (POL-03) to enhance supports for workers who must travel as a result of work injuries. Highlights:

- Advance allowance covering kilometer reimbursement, and covers accommodations, tolls, meals and other costs for workers and attendants for all approved out of province travel
- Eliminate requirement that workers submit an associated expense claim.
- Family support payment of \$500 for workers hospitalized for a week or longer
- Exceptional circumstances

clause to address barriers to attending treatment or programs

- Adjustments to various other eligible travel supports.

WORK INJURIES

Jun 16: The PEI WCB published its [2020 Annual Report](#). As in 2019, sprains/strains/tears was the leading cause of lost-time injury claims at 58.2%, as opposed to 58.3% last year. Other key health and safety metrics:

- Time-loss injury rate (per 100 workers): 1.20 (vs 1.43 in 2019)
- Total claims: 1,583 (1,984)
- Temporary wage loss: 852 (1,046)
- Medical aid only: 569 (748)
- Fatalities: 2 (0).

WORKPLACE SAFETY

Mar 6: [Revised OHS Regulations](#) took effect harmonizing PEI's first aid and PPE requirements with nationally agreed to standards. Other key new OHS requirements included in the regulations: i. Station a worker in a position to safely effect the rescue of a worker exposed to a hazardous condition; and ii. Ensure workers don't enter an excavation or a trench 4-feet or more in depth unless there's a proper shoring net and workers use CSA-approved safety headwear and footwear.

CASES

TRAFFIC ACCIDENT IS WORK RELATED EVEN IF WORKER ISN'T DOING ORDINARY JOB DUTIES

An injured electrician was told she could return to work as long as she produced a doctor's note assessing her medical capabilities. She got the letter and was in the process of delivering it to her employer when she got into a motor vehicle accident. The WCB said the MVA wasn't work-related and the Workers Comp Appeals Tribunal (WCAT) agreed. True, she was doing a task for her employer, the WCAT acknowledged, but the task wasn't related to her ordinary work duties. But the electrician had the last laugh when the PEI Court of Appeal reversed the ruling. Having found that the electrician was carrying out a task for the employer, the WCAT should have found the accident work-related without considering the nature of the task and whether it was part of her ordinary work duties.

QUÉBEC

LAWS & ANNOUNCEMENTS

AGRICULTURAL SAFETY

May 17: From now through August 26, the CNESST Prevention Squad will travel to workplaces to deliver free 30-minute presentations to educate agricultural employers and temporary foreign workers on OHS and labour standards requirements for TFWs, including the main hazards posed by and the minimum wage, rest, vacations, statutory holidays and other work condition requirements for agricultural work.

ASBESTOS

May 5: Proposed new OHS regulations would impose stricter safety requirements at construction sites at which there's the potential of asbestos dust emissions. Highlights:

- Require use of wetting agent for removal of friable asbestos-containing materials
- Require use of extraction ventilation system with a HEPA filter providing at least 4 changes in air per hour for certain work
- New cleaning rules for equipment, tools, PPE and protective clothing.

COVID-19 ENFORCEMENT

Jan 15: The government sent a message to manufacturing and construction businesses that are still operating: Comply with the new COVID curfew and shutdown measures or we'll announce even stricter restrictions. The unusual warning comes in response to reports of non-compliance in workplaces within these sectors.

COVID-19 RESPONSE

Nov 20: Faced with a surge of new cases, Québec is calling on residents to voluntarily quarantine for a week before and after Christmas while offering a temporary 4-day relaxation of restrictions on gatherings immediately before and after the holiday. Meanwhile, Montréal and surrounding municipalities, as well as Laval, Québec City, Mauricie and several other Regions remain at Level 4 (Red), meaning the restaurants, bars and food stores remain closed except for delivery, take-out and drive-through. Violations of restrictions can result in fines of up to \$1,000.

Dec 4: In response to a new surge of COVID cases, Québec extended the Level 4/Red area restrictions on businesses that were due to expire through at least January 11, 2021. Retail, food and drug stores across the entire province must limit the number of customers based on the square footage of the accessible premises. Private gatherings in Level 4/Red areas are also banned between December 24 and 27, and subject to limits of 6 people in Orange and 10 people in Yellow zones.

Jan 11: Québec extended the mandatory work from home and closure of non-essential business restrictions that were due to expire through at least February 8. In addition, a curfew between 8 p.m. and 5 a.m. is now in effect, meaning that businesses that are still open will have to close by 7:30. However, essential business can still keep regular hours and restaurants can provide delivery service during the curfew.

Feb 8: Although the province-wide curfew remains in effect, Québec loosened restrictions in Orange zones, including allowing non-essential businesses, hair salons, libraries, museums, shopping centers and restaurants (subject to a limit of 2 per table) to re-open. The new rules don't apply in Red zones, which remain under full lockdown.

Mar 12: CNESST has performed 19,577 COVID-related workplace inspections in the one full year since the pandemic began. There have also been 42,168 COVID-related

workers comp claims filed, 24,349 for occupational injuries and 17,819 under the safe maternity program.

Jun 1: As case rates decline, Québec lifted the curfew and loosened province-wide COVID restrictions to allow:

- Private outdoor gatherings of up to 8 people
- Outdoor restaurant and terrace dining
- Travel between regions
- Outdoor stadium gatherings of up to 2,500 people.

Jul 8: Québec announced that it's prepared to establish a vaccine passport system in September, depending on the current health situation. Under the system, residents over age 12 who can get the vaccine will need a passport showing they've received 2 doses to participate in certain non-essential activities, such as going to gyms, team sports, bars, restaurants, etc. The passport won't be required for food shopping, going to the doctor and other essential activities.

Jul 12: Having already moved all regions into the green zone, Québec narrowed its COVID restrictions even further:

- Face masks remain mandatory in indoor public spaces
- Elimination of capacity restrictions in retail businesses, provided that at least 1 metre of space is kept.
- 50-spectator limit for indoor amateur sports events and 100 for outdoor events

COVID-19 SCREENING

Feb 26: New guidelines require healthcare operators to use rapid antigen testing to screen workers for COVID. Unlike molecular tests that detect coronavirus RNA, antigen tests deliver results at the point of testing in as little as 5 to 10 minutes. Antigen screening should be done on a recurrent basis with 80% of workers in contact with vulnerable patients undergoing testing, according to the Québec Ministry of Health, which is distributing the tests to healthcare and other private sector employers.

EMERGENCY RESCUE

Jan 6: CNESST published [proposed changes to OHS regulations](#) for protecting workers who work near water from risk of drowning. The regulations, which are slated to take effect on February 21, require employers to implement a rescue plan and revise and clarify rules governing:

- The safety information that must be available on a site before work near water begins
- The kinds of lifejackets and clothing that workers at such sites must wear
- When thermal protective clothing is required
- The standards for lifeboats used in rescue plans.

FACE MASKS

Nov 3: CNESST has partnered with the Bureau de normalization du Québec to develop a program requiring manufacturers of

non-medical face masks to get their products certified. Masks that meet the new standards, both single-use and reusable, will get a distinctive mark showing that they've been certified.

Dec 17: The *Bureau de normalization du Québec* (BNQ) launched a new program allowing manufacturers and distributors of COVID face masks to get their products certified for use in workplaces. Masks must meet filtration, breathability, material and maintenance standards to receive the distinctive BNQ marking showing they're compliant.

FIRST AID

March 17: That's the deadline for complying with [new OHS rules](#) requiring that workplace first aid kits meet CSA Z1220-17. CNESST issued new [guidelines](#) to help employers choose the right first aid kits.

May 5: CNESST proposed changes to OHS regulation safety requirements for first aid at forestry sites to make them more tailored for forestry work and "forest management activity," including the provisions dealing with rescue and evacuation at sites with more than 50 workers.

FORESTRY SAFETY

Feb 3: CNESST proposed [new OHS safety and first aid regulations](#) for forest management operations specify that workers who manually fell trees with a chainsaw must be at least age 16 and complete certified

OHS training, unless they're working as part of a recognized work-training internship. The regulations also update and clarify which CSA, ANSI and other standards head protection, eye and face protection, protective footwear and other items of PPE must meet.

GREEN BUILDINGS

Mar 15: That's the deadline for construction firms and other stakeholders to comment on a [government proposal](#) to foster the construction of green and smart buildings in the province.

JHSCs

Mar 10: In Assembly negotiations over the OHS reform bill ([Bill 59](#)), the government pulled back on its proposal to make risk levels a factor in determining if a workplace needs a JHSC and health and safety prevention program. Under the new version of the Bill, JHSCs and programs would be required for all sectors but continue to be based on numbers of workers. Thus, workplaces with 20 or more workers would have to establish JHSCs and plans, while those with fewer than 20 workers would have to have health and safety representatives.

MATERIALS HANDLING

May 5: CNESST proposed changes to OHS regulation safety rules for use of personal lifting devices as well as training requirements for operators of mobile lifting platforms at construction sites and mines.

OHS REFORM

Jan 20: The Assembly moved closer to passing [Bill 59](#) which would give Québec's *OHS Act* a much needed rework. Key changes:

- Broaden scope of sectors subject to OHS laws
- Allow employers to set up one prevention program and JHSC for all its sites
- Require JHSCs at construction sites
- New workplace, psychological and domestic violence requirements
- Clarify that law protects interns
- New protections for workers who are pregnant or breastfeeding.

Feb 4: The Assembly adopted in principle [Bill 59](#) to give Québec's *OHS Act* a facelift. Key changes:

- Broaden scope of sectors subject to OHS laws
- Allow employers to set up one prevention program and JHSC for all its sites
- Require JHSCs at construction sites
- New workplace, psychological and domestic violence requirements
- Clarify that law protects interns
- New protections for workers who are pregnant or breastfeeding

Mar 10: In response to public criticism and feedback during the hearings, the government tabled a number of amendments to some of the more controversial aspects of [Bill](#)

[59](#):

- Specify that the professional who monitors a worker's pregnancy is the one who issues the certificate for preventive withdrawal
- Provide for regular updating of hazards requiring preventive withdrawal
- Specifically state that the OHS law applies to workers who telecommute whom the employer would have to supervise, while also respecting the worker's privacy.

- normalization du Québec (BNQ) standards + social distancing + physical barriers for indoor work; BNQ masks mandatory for outdoor work only where social distancing can't be maintained; mandatory eye protection for cleaning shared tools
- Yellow or Green: One of following: i. BNQ masks; ii. Social distancing; or iii. Physical barriers; optional eye protection for cleaning shared tools.

PPE

Feb 11: All healthcare workers in hot areas must now wear an N95 or stronger filtered respirator. CNESST issued the requirement based on new scientific information showing that new coronavirus variants spread via aerosol mists. Workers must perform fit testing on filtered respirators before using them for the first time.

Mar 15: CNESST renewed the order that all healthcare workers in hot areas wear an N95 or stronger filtered respirator. The requirement is based on new scientific information showing that new coronavirus variants spread via aerosol mists. Workers must perform fit testing on filtered respirators before using them for the first time.

Jun 7: CNESST modified its COVID guidelines for workplaces based on alert level:

- Red or Orange: Filtered masks meeting Bureau de

Jun 28: CNESST announced that Montreal-based EcoUNIFORM has received the BNQ 1922-900 certification of performance of non-medical masks in the workplace for a batch of 15,000 reusable masks made in the province by Chemise Empire of Louiseville. The BNQ certification program launched last December for manufacturers voluntarily seeking certification of their masks for use in the workplace.

PRIVACY

Oct 20: The Québec Assembly passed [Bill 64](#) setting out tough new privacy requirements for both government and private sector employers and imposing administrative monetary penalties for violations. Key new employer duties:

- Duty to destroy or make anonymous personal information after completing the purpose for collecting it
- Duty to erase personally identifiable data upon the person's request

- Duty to appoint a person responsible for protecting personal information.

RETURN TO WORK

Jun 30: Québec unveiled a new gradual return to work plan for public service staff and suggests that private sector companies use it to establish their own protocols for telework and returning to work.

Highlights:

- Infection control via exclusion of the symptomatic, social distancing, hand hygiene, cough etiquette and clean air
- Hybrid models that alternate between teleworking and being present at the workplace
- Notify workers of preventive measures to follow.

TEMPORARY FOREIGN WORKERS

Jun 4: The Human Rights Commission issued an open letter expressing concern about the rights of temporary foreign workers in Québec, especially regarding housing conditions. The Commission suspects that the reportedly poor conditions may be part of the broader and more systemic discrimination against people of foreign nationalities taking place in Canada and notes that TFWs are historically reluctant to file complaints due to fear of retaliation.

TRAFFIC SAFETY

Jun 7: CNESST launched a new information campaign to educate workers, employers and contractors

about health and safety hazards on road construction sites.

TRAVEL RESTRICTIONS

Jun 16: Québec reopened the border with Ontario. Travelers can not only enter the province without isolating for 14 days but also go to restaurants, provided that they follow the COVID restrictions in effect for that particular zone.

VACCINATION LEAVE

May 6: Québec tabled legislation (Bill 798) that would give employees up to 4 consecutive hours' paid leave to receive each dose of the COVID-19 vaccination leave (8 hours in total) for as long as the public health emergency remains in effect. As in all of the other jurisdictions to adopt paid vaccination leave, all employees are eligible for paid time off regardless of how long they've been employed.

WORKERS COMP

Oct 27: Key new changes proposed in newly tabled [Bill 59](#):

- Establish Scientific Committee to recommend which occupational diseases to cover
- Replace and enhance Schedule I by, among other things, adding post-traumatic stress and 9 new cancer to diseases presumed to be work-related
- Allow CNESST to provide rehab benefits before determining coverage of work injury

- Clarify that students working for an employer are entitled to benefits
- More flexibility in appeals and review of benefits entitlements
- Increase fines for violations.

Jan 1: In response to the pandemic, CNESST cut 2021 average workers comp premiums \$0.08 to \$1.77 per \$100 of assessable payroll.

Jan 20: Key changes contained in [Bill 59](#), which is now the subject of Assembly hearings:

- Establish Scientific Committee to recommend which occupational diseases to cover
- Replace and enhance Schedule I by, among other things, adding post-traumatic stress and 9 new cancer to diseases presumed to be work-related
- Allow CNESST to provide rehab benefits before determining coverage of work injury
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Feb 4: Key changes contained in [Bill 59](#), which has now been approved in principle:

- Establish Scientific Committee to recommend which occupational diseases to cover
- Replace and enhance Schedule I by, among other things, adding post-traumatic

stress and 9 new cancer to diseases presumed to be work-related

- Allow CNESST to provide rehab benefits before determining coverage of work injury
- Clarify that students working for an employer are entitled to benefits
- More flexibility in appeals and review of benefits entitlements
- Increase fines for violations.

Mar 10: Responding to public criticism on [Bill 59](#), the government has backed off on its proposal to tighten restrictions on workers comp claims by injured workers with pre-existing disabilities. The newly proposed government amendments would also authorize CNESST to determine, with the collaboration of the employer and worker, whether there's suitable employment for an injured worker seeking to return to work.

May 27: A bit of good news for Québec employers is that CNESST proposed a 10-cent cut in the 2022 average workers comp contribution rate, or \$1.67 per \$100 assessable payroll.

WORKPLACE HARASSMENT

Feb 12: That's the deadline for employers and employer organizations [to apply](#) to CNESST for up to \$90,000 in funding for projects to combat psychological or sexual harassment in the workplace. There are 2 different tracks: i. The Assistance Program for projects respecting standards relating to

psychological or sexual harassment at work; and ii. The program to help raise awareness of employees and self-employed workers in matters of psychological or sexual harassment at work.

WORKPLACE SAFETY

Oct 27: Newly tabled [Bill 59](#) would give a face lift to Québec's *OHS Act* which hasn't changed much in 35 years. Key changes:

- Broaden scope of sectors subject to OHS laws
- Allow employers to set up one prevention program and JHSC for all its sites
- Require JHSCs at construction sites
- New workplace, psychological and domestic violence requirements
- Clarify that law protects interns
- New protections for workers who are pregnant or breastfeeding.

WORKPLACE VIOLENCE

Oct 27: Québec is the only province whose OHS laws don't specifically require employers to take measures to prevent workplace violence. Instead, that duty is implied under the *OHS Act* and the protections against psychological harassment contained in the *Labour Standards Act*. But newly tabled [Bill 59](#) would rectify that by incorporating new OHS regulations covering workplace violence, including domestic violence.

Jan 20: The Québec Assembly held

hearings on [Bill 59](#) which would enable the government to create new OHS regulations requiring employers to take specific measures to prevent workplace violence, domestic violence and workplace harassment. Current labour standards and OHS laws require employers to protect workers from psychological harassment; the duty to prevent workplace violence is merely implied.

Feb 4: The Québec Assembly adopted [Bill 59](#) in principle giving the government to authority to create new OHS regulations requiring employers to take specific measures to prevent workplace violence, domestic violence and workplace harassment. Current labour standards and OHS laws require employers to protect workers from psychological harassment; the duty to prevent workplace violence is merely implied.

Mar 10: The Québec Assembly is still working on [Bill 59](#) which would give the government authority to create new OHS regulations requiring employers to take specific measures to prevent workplace violence, domestic violence and workplace harassment. Current labour standards and OHS laws require employers to protect workers from psychological harassment; the duty to prevent workplace violence is merely implied. Changes proposed in committee negotiations include specifying that employers must protect workers from not just physical, psychological, domestic and family violence but also sexual violence in the

workplace.

CASES

VIOLATING WORKPLACE COVID RULES IS ALSO AN OHS VIOLATION

An important new case from the Court of Québec is the first to officially confirm what had previously been taken for granted: An employer's noncompliance with the workplace health measures mandated by government emergency decrees constitutes a violation of the OHS laws. The case began when a CNESST inspector discovered multiple COVID violations at a construction site, including failure to clean and disinfect toilets, surfaces and door knobs at least twice a shift and provide trash cans for disposing of used disinfectant towels and charged the employer with violating Article 51(5) of the *OHS Act*, which requires employers to "use methods and techniques intended for the identification, control and elimination of risks to the safety or health of the worker." The court agreed that the employer had failed to comply with the COVID orders and, in so doing, committed an OHS violation [[CNESST c. 8653631 Canada inc.](#), 2020 QCCQ 6684 (CanLII), November 12, 2020].

DELAY IN REPORTING WORK INJURY NEARLY COSTS WORKER HIS WORKERS COMP BENEFITS

On Sept. 4, a truck driver in a stone quarry twists his knee while climbing

out of the vehicle. Not wanting to miss any work, he takes anti-inflammatory drugs and soldiers on. With the pain and swelling getting steadily worse, he tells his foreman about the injury on Sept. 16. But the foreman doesn't relay the message to management until Sept 27. Three days after that, the worker is diagnosed with a torn medial meniscus. The employer contends that the injury isn't work-related and contests the workers comp claim. After CNESST denies the claim, the driver appeals. **Result:** Ruling reversed. The medical evidence and convincing testimony of the driver persuade the appeals tribunal that the injury occurred on Sept. 4. And while the employer got the message late, it couldn't blame the driver for its lack of communication with the foreman [[Leblanc and DPS Transport inc.](#), 2020 QCTAT 4669 (CanLII), December 9, 2020].

TRASHING SUPERVISOR ON FACEBOOK IS JUST CAUSE TO TERMINATE

*"[Name is an] a*****. . . The less we see your face, the better we are. Besides, I don't think you make a big difference in the mine. You bring nothing, you are only an expense. So guys, beware of the guy."* A mine worker got fired for posting these comments about his supervisor on his Facebook page. The worker admitted that the remarks were

disrespectful, harmed the supervisor's reputation and violated the employer's Code of Civility but contended he was just blowing off steam after a frustrating incident that had happened in the mine that day in which the supervisor issued a warning to other workers for leaving their shift early. The rumor was that the whole crew would get hit with a warning as well and the worker just "blew his boat." But the Québec arbitrator was less than impressed and tossed the grievance. "Impulsiveness" is no defence for disrespectful and uncivil behaviour, he concluded [[Unifor, Section Locale 666 c Niobec Inc.](#), 2020 CanLII 96028 (QC SAT), December 7, 2020].

COURT UPHOLDS STOP WORK ORDER FOR TRENCHING VIOLATIONS AT CONSTRUCTION SITE

A CNESST inspector cited the project manager of a school construction for not having a certificate from an engineer certifying the stability of the excavation walls at the site as required by OHS regulations. When he returned a month later, the excavation was still there but it wasn't shored and there was still no engineering certificate at the site. So, he issued a stop work order. The project manager appealed but to no avail. The evidence showed that the trench lacked the required shoring. And it had no due diligence defence for the missing engineer certificate because the inspector specifically told the project manager's president that it had to keep the certificate available at the

site [[CNESST c. Construction Blenda inc.](#), 2021 QCCQ 596 (CanLII), February 11, 2021].

IS 3-DAY SUSPENSION TOO HARSH FOR DELIBERATELY DISABLING MACHINE SAFETY DEVICE?

An auto shop worker got a 3-day suspension for deliberately disabling the sparking arrester of the welding machine he was operating. The union asked the Québec arbitrator to reduce the penalty to a written warning. And that's what the arbitrator did. The arbitrator didn't believe the union's claim that the worker didn't realize the arrester was a safety device. But even though he did it on purpose, the offence wasn't serious enough to warrant a 3-day suspension, it reasoned, given that it was a first offence. The worker didn't destroy the arrester, he just removed a piece of it to facilitate his access to the machine so that he could perform his job better and more productively. Although he did falsely deny it at first, the worker almost immediately changed his position and admitted his violation [[Unifor, Local Section 244 v Siemens Canada Limitée](#), 2021 CanLII 15192 (QC SAT), March 1, 2021].

DRIVER KEEPS HIS JOB EVEN THOUGH HIS "SLACKNESS" CAUSED EXPENSIVE ACCIDENT

The semi-trailer driver would have noticed the misalignment between the vehicle and trailer had he been paying attention and gotten out of the vehicle to inspect before

unloading the way safety procedures required. And while it was his first safety slip-up since 2004, it was a costly mistake that resulted in a vehicle flip-over and the loss of its entire load. But the Québec arbitrator basically shrugged it off in knocking down the discipline from termination to a 10-day suspension. Although the appeals court went out of its way to blame the costly incident on the driver's "slackness," it upheld found the arbitrator's ruling reasonable and refused to overturn it [[Delorme Enterprises Inc. vs. Administrative Labor Tribunal](#), 2021 QCCS 1587 (CanLII), April 27, 2021].

INSTALLING CAMERA IN TRUCK TO ANALYZE ACCIDENT CAUSES IS VALID SAFETY MEASURE

The union claimed that installing a DriveCam system in the cockpit of concrete mixers was an unwarranted intrusion of drivers' privacy. The employer contended it was a justifiable safety measure because the system generated data that made it possible to identify and correct the causes of accidents. The arbitrator sided with the employer. Concrete driving is an inherently dangerous occupation even if there's no history of incidents or evidence showing it was any worse at this particular work site. The Québec Court of Appeal said the arbitrator's ruling was reasonable and refused to overturn it [[Steelworkers Union, Local 7625 c. Lafarge Canada Inc.](#), 2021 QCCA 642 (CanLII), April 16, 2021].

DOES EMPLOYER HAVE TO LET EMPLOYEE TELEWORK FROM HAWAII?

A case raising the question of how far employers must go to accommodate employees who want to work from home during COVID involved a professor who wanted to stay in Hawaii after finishing his one-year sabbatical because of the health risks being in Canada would pose to one of his kids. You can work remotely, the university responded, as long as you do it in Canada. The Québec arbitrator found the no-telework-from-abroad policy reasonable given the tax and insurance difficulties and sympathized with the university's wish not to set a dangerous precedent of letting employees work from wherever in the world they want. However, it ruled that the university should also be prepared to consider exceptions to the policy, especially where: i. teleworking is mandatory under COVID rules; ii. employees don't need to be physically present to do their work duties; iii. the time zone difference wouldn't affect the quality of their work; and iv. the request is based on the health of the employee's child [[Syndicat des professeurs et professeures de l'Université Laval \(SPUL\) and Université Laval](#), January 28, 2021].

No PROOF THAT EXCAVATOR CONTRACTOR VIOLATED WATERSIDE SAFETY REGULATIONS

The shovel of a hydraulic excavator being used to break thick ice at the edge of a frozen canal slid into the icy water dragging the operator along. The operator managed to get out with only minor injuries, but CNESST charged the employer with violating Construction regulations requiring special safety precautions for “work above or near water.” After hearing CNESST’s case, the Québec court dismissed the charges for lack of proof. The agency didn’t prove that the work was carried out less than 2 metres from a body of water or watercourse, the distance at which the requirements contained in the regulations apply [[CNESST c. Excavation S. Allard inc.](#), 2021 QCCQ 4600 (CanLII), June 2, 2021].

MUST EMPLOYERS PAY WORKERS FOR TIME IN PRE-EMPLOYMENT TRAINING?

A CNESST inspector cited a recruiting firm for what she believed were 2 labour standards violations: (i) requiring employees to take pre-employment training at their without compensation for their time; and (ii) reserving the right to withhold \$500 from the final paycheck to cover the costs of training provided to employees who quit their job before completing 520 hours of work. But the Court of Québec ruled that both practices were perfectly legal and dismissed the case. The first requirement was okay because the

law doesn’t obligate employers to pay persons for the time they spend to acquire the training essential for the job they apply for; that same rule meant that the \$500 takeback provision was also legal [[CNESST c. 9070-1251 Québec inc.](#), 2021 QCCQ 3672 (CanLII), May 14, 2021].

FAILING TO FOLLOW VOLUNTARY ANSI STANDARD ISN’T AN OHS VIOLATION

CNESST cited an employer for failure to provide safe equipment, namely, a jack not equipped with an anti-rotation rod and fall prevention device as required by ANSI/ALCTV: 2011. Even though the OHS regulation doesn’t mention ANSI or any other specific voluntary standard, the Crown insisted that complying with the ANSI rule is a required best practice. The Court of Québec disagreed and tossed the charge. The Crown didn’t produce evidence showing that the ANSI standard is a best practice or that it even requires the rod and fall protection device. Besides, the ANSI standard isn’t accessible to the public and even if the employer could have accessed it, wouldn’t have been able to read the standard because it’s written only in English [[CNESST c. S. Turcotte inc.](#), 2021 QCCQ 5403 (CanLII), June 28, 2021].

SASKATCHEWAN

LAWS & ANNOUNCEMENTS

ACCESSIBILITY

Dec 7: Saskatchewan tabled legislation ([Bill 4](#), *The Construction Codes Act*) authorizing the government to create new construction regulations and standards to ensure that people with disabilities have access to buildings.

May 11: Saskatchewan passed new legislation to incorporate accessibility standards into construction codes. The law allows local building authorities to:

- Register an interest on building titles for unresolved building official orders
- Either develop their own building bylaws or use the default bylaws to be created
- Cooperate with local authorities to administer and enforce construction standards across multiple regions.

COVID-19 ENFORCEMENT

Dec 10: Newly tabled [Bill 23](#) would increase the maximum fines for violating an emergency order for individuals from \$2,000 to \$7,500 and for corporations from \$10,000 to \$100,000.

COVID-19 RESPONSE

Nov 19: Saskatchewan made it mandatory to wear a non-medical face mask or covering in all indoor public places, including workplaces. Employers must also post signs notifying workers and customers that masks are required. Meanwhile, the maximum number of persons allowed for indoor gatherings has been cut from 10 to 5; the limit for outdoor gatherings is 30. The government is also asking people to work from home if they can.

Dec 17: Reeling from a surge of new cases ahead of Christmas, Saskatchewan tightened emergency restrictions by limiting private, indoor gatherings to immediate household members only. Single individuals may meet with one, consistent household of less than 5 individuals and co-parenting arrangements can continue. Effective December 25, retail services must reduce capacity to 50% and large retail locations must limit capacity to 25%.

Mar 8: The Saskatchewan Health Authority says that public health measures have so far failed to drive COVID cases below targeted 5% levels. Over the past month, the positive case rate in the province has

hovered between 6% and 8%, having spiked to roughly 12% in January. The recent remarks are an indirect swipe against the government which has talked about relaxing current COVID measures on the basis of falling case rates.

Apr 27: Saskatchewan and neighbouring North Dakota signed an agreement to work together to vaccinate truck drivers and other essential workers transporting goods across the Canadian-U.S. border.

May 9: If case and vaccination rates continue to trend in the right direction, Saskatchewan plans to launch Step One of its re-opening plan on May 30. Highlights:

- Restaurants and bars can have up to 6 people per table
- Limit of 10 people for indoor and outdoor private gatherings
- Limit of 30 people at public indoor gathering and 150 for outdoor gathering
- Mask and social distancing restrictions remain in effect.

Jun 20: That's the scheduled launch date for Step Two of the Saskatchewan reopening plan if case and vaccination rates continue to trend in the right direction.

Highlights:

- Removal of table capacity limits on restaurants and bars
- Limit of 15 people for indoor and outdoor private gatherings
- Removal of all remaining restrictions on youth and adult sports
- Limit of 150 people at public

indoor and private and public outdoor gatherings

- Mask and social distancing restrictions remain in effect.

Jul 11: With 71% of residents having gotten their first dose and 50% totally vaccinated, Saskatchewan moved to Step 3 of its reopening plan by removing all public health orders, including province-wide mask requirements and limits on sizes of events and gatherings.

EMERGENCY RESPONSE

Mar 8: The Saskatchewan Public Safety Agency (SPSA) announced that it's making upgrades to its aging 911 technology. To pay for the improvements, the province is doubling the monthly Sask911 fee automatically applied to all phone bills to \$1.88, effective April 7.

Jul 7: The Saskatchewan Public Safety Agency launched a new [website](#) to make it easier for residents to get emergency information via mobile and multiple other devices.

FIRST AID

Feb 3: Saskatchewan became the latest province to harmonize its OHS first aid requirements with nationally recognized standards. Under the [new rules](#), which take effect on April 1, 2021, employers must ensure that workplace first aid kits meet CSA 22110-17 criteria.

INJURY REPORTING

Feb 8: The Saskatchewan WCB revised the online version of its [Employer’s Initial Report of Injury \(E1\)](#) form designed to make it easier to enter information about reportable incidents and upload documents as attachments to reports.

LABOUR RELATIONS

Jul 11: If your workers are unionized, you need to know that the Saskatchewan Labour Relations Board has resumed regular operations, including in-person hearings—although video hearings remain an option. You may also file documents in-person at the Regina office again.

MENTAL HEALTH

Apr 14: WorkSafe Saskatchewan launched a new [online resource centre](#) to help employers and workers build psychologically healthy and safe workplaces. The WCB accepted 274 psychological injury claims in 2020, as compared to just 109 in 2016.

PPE

Feb 3: Saskatchewan’s OHS regulations list specific CSA standards particular items of PPE must meet. Those CSA standards haven’t changed. But to harmonize its rules with the rest of Canada, the province revised the *versions of the CSA standards* that apply to each type of PPE, including:

- Protective headwear: CSA

Z94.1, 2015

- Eye and face protection: CSA Z94.3, 2015
- Protective footwear: CSA Z195-14
- Hearing protection: CSA Z94.2-14
- Personal floatation devices: Must be labelled as approved by Transport Canada or another recognized maritime authority.

PRIVACY

May 25: The Saskatchewan Privacy Commissioner issued a [new bulletin](#) outlining the privacy concerns of using video surveillance cameras and other technologies. “The personal information or personal health information captured on the video surveillance would be in the possession or control of your organization,” the Commissioner warns, “so it would be your responsibility to ensure that the privacy of the individuals captured in the surveillance is protected.”

RECYCLING

Jan 1: Saskatchewan kicked off its new household recycling program for consumer batteries. The program, which will be run by non-profit Call2Recycle Canada Inc., accepts used single-use and rechargeable consumer batteries weighing less than 5 kg each, other than lead acid batteries, at drop-off locations across the province, including in all SARCAN depots.

SAFETY ASSOCIATIONS

Jan 1: The Saskatchewan WCB revised its guidelines ([POL 06/2020](#)) for giving financial grants to safety associations formed by employers to prevent workplace injuries and the standards those associations must meet to qualify for grant money.

SICK LEAVE

May 7: Having already provided temporary paid COVID-19 vaccination leave, Saskatchewan tabled [Bill 603](#), which would provide paid sick leave on a permanent basis. Specifically, employees would get 10 days' paid sick leave in a normal year, which increases to 14 during a year in which a communicable disease public emergency is in effect. Wages would be payable at: i. the regular rate of pay on the first day of leave; or ii. 5% of total wages, not including overtime, in the 4 weeks before first day of leave if the employee's normal workday or wage varies from day to day.

SRAR

Dec 7: Saskatchewan announced that it's starting a new program called the Strong Recovery Adaptation Rebate to help small businesses adapt to COVID challenges. Eligible businesses that have less than 100 employees will receive the 50% rebate up to a maximum of \$5,000 for a \$10,000 expenditure to change square footage use, install physical infrastructure, upgrade technology or other projects adapting their business models to meet the realities

of the global pandemic.

TRAINING SUBSIDY

March 31: That's the newly extended deadline [to apply](#) for the Re-Open Saskatchewan Training Subsidy that was due to expire on December 31. Launched in June as a COVID relief measure, the RSTS provides 100% reimbursement to private sector employers for employee training costs up to a maximum of \$10,000 per business. Approved training must start within 4 days of the RSTS application date and wrap up within 4 months.

WHISTLEBLOWERS

Dec 10: First Reading for [Bill 20](#), which would beef up whistleblower protection for employees of the Saskatchewan Health Authority, Saskatchewan Cancer Agency and other publicly funded health entities who report wrongdoing by their organization.

WHMIS

Feb 3: Like several provinces, Saskatchewan used to keep its WHMIS and other OHS rules in separate regulations. But in a bit of housekeeping that should make it easier to look up the rules, the WHMIS regulations have now been incorporated right into the OHS regulations.

WORKERS COMP

Oct 29: Recognizing that this is a bad time for a rate hike, the

Saskatchewan WCB announced that it's leaving average 2021 workers comp premiums at \$1.17 per \$100 of payroll as a kind of COVID relief measure. Had it applied its standard rate calculation formula, the average would have increased to \$1.23.

Dec 7: The Saskatchewan WCB confirmed that it's leaving average 2021 workers comp premiums at \$1.17 per \$100 of payroll as a kind of COVID relief measure. Had it applied its standard rate calculation formula, the average would have increased to \$1.23. The WCB is also capping industry level rates at 10%.

Jan 1: The annual Consumer Price Index adjustment for workers comp benefits in 2021 will be 0.9%. The WCB also announced that the penalty to employers who pay their premiums late will be 6.50%.

Feb 8: The WCB revised the online version of its [Account Closure/Sale Form](#) (ACF) form that employers must use to report that their business has had a change in ownership, closed down or is no longer operating in Saskatchewan.

Feb 25: The Saskatchewan WCB issued a new [Fact Sheet](#) that explains the procedures and principles the agency uses to make decisions on workers comp appeals.

May 26: The Saskatchewan WCB announced that it remains fully funded at 112.4%, putting it in a position of being able to meet its benefits payment and other financial obligations. Meanwhile, the agency launched its new Business

Transformation Program designed to dramatically improve its customer service model.

WORK INJURIES

Apr 30: Workers comp injury rates and claims declined significantly in 2020, according to Saskatchewan WCB's newly published 2020 Annual Report. Key metrics:

- Total injury rate down 10% to 4.46 per 100 workers
- Time loss injury rate down 4.3% to 1.78 per 100
- Total accepted claims down 16% from 21,473 in 2019 to 17,944 in 2020
- Total accepted time loss claims decrease from 8,036 to 7,134
- Total fatalities down 6% from 36 to 34.

CASES

CIRCUMSTANTIAL EVIDENCE ENOUGH TO PROVE WORKER SMOKED POT AT WORK

If you don't think drug testing is important for enforcing a substance abuse policy, consider this case involving a grocery worker accused of smoking pot in a meat freezer while on break. Since there was no testing, the crucial question was whether or not she actually did it. The employer relied on circumstantial evidence: The worker was in the meat freezer even though she didn't belong there. And when she left, the freezer smelled of pot, which wasn't the case before she entered. But thin as it was, this evidence was enough to persuade the Saskatchewan arbitrator that the employer had just cause for discipline. And the 10-day suspension it handed down was a reasonable penalty for the offence, the arbitrator concluded [[United Food and Commercial Workers, Local 1400 v Saskatoon Co-operative Association Limited](#), 2020 CanLII 78470 (SK LA), October 15, 2020].

LACK OF SAFETY TRAINING LEADS TO ELECTROCUTION DEATH, \$126,000 FINE

A worker was fatally electrocuted when the machinery he was

servicing made contact with an energized influence line. The victim's employer was fined \$126,000 for failing to ensure that a worker moved from one site or activity that poses different hazards gets safety training on the new hazards posed by the new site or activity [[Inland Steel Products Inc., Government News Release](#), November 20, 2020].

EMPLOYER FINED \$91,000 FOR LIFTING DEVICE FATALITY

The steel tube of a lifting device struck a worker taking his life. The Manitoba construction company that employed the victim was fined \$91,000 after pleading guilty to The company, operating as Matt Reimer Construction, pleaded guilty to failing to ensure that a hoist, crane and lifting device, including all rigging, is designed, constructed, installed, maintained and operated to perform safely, resulting in a worker's death [[7262265 Manitoba Ltd., operating as Matt Reimer Construction, Government News Release](#), November 13, 2020].

\$40,000 FINE FOR INJURY TO OILFIELD WORKER

An oilfield worker suffered serious injuries after being hit by a hose coupler. The employer was convicted of failing to provide the victim the

necessary health and safety information, training and supervision and fined \$40,000 [*Spade Oilfield Ltd., operating as Thiessen Oilfield Services*, [Government News Release](#), November 13, 2020].

EMPLOYER FINED \$24,000 FOR INCIDENT ON SCAFFOLD-ELEVATED WORK PLATFORM

A worker suffered injuries while working on a platform attached to a forklift. The employer pled guilty to 2 OHS violations, including failure to ensure that: i. no worker works, no material is piled, stored or handled, no scaffold is erected or dismantled and no equipment or powered mobile equipment is used or operated within the specified minimum clearance distance specified in the OHS Regulations; and ii. work is sufficiently and competently supervised. Result: \$24,000 in fines [*101063698 Saskatchewan Ltd.*, [Government News Release](#), November 16, 2020].

LOCKOUT VIOLATION RESULTS IN FARM WORKER'S DEATH, \$70,000 FINE

A Saskatoon company will fork over \$70,000 after pleading guilty to an OHS lockout violation resulting in a farm worker's death. The victim became entangled on the roller of a baler while clearing the roller's teeth [*Sommer Green Forages*, [Govt. Press Release](#), December 30, 2020].

\$35,000 FINE FOR NOT TRAINING WORKER KILLED IN SNOWMOBILE CRASH

Delivering proper safety training might have saved the life of the worker who got killed after being thrown from a snowmobile, especially since operating the snowmobile was outside the victim's normal job duties. Training would also have saved the employer \$35,000 it has to pay after pleading guilty to an OHS violation [*Alsport Sales Inc.*, [Govt. Press Release](#), January 18, 2021].

FARM COMPANY FINED \$20,000 FOR NOT REPORTING WORKER'S HOSPITALIZATION INJURY

A farm worker had to be hospitalized after sustaining serious injuries as a result of getting pinched between a skid shack and the bucket of a tracked hoe. In addition to failing to protect the victim, the employer pled guilty of not reporting the incident to OHS authorities within 72 hours, as required by the OHS Regulations and was hit with a fine of \$20,000 [*K. Hauesler Farms Inc.*, [Govt. Press Release](#), December 22, 2020].

TRUCK DRIVER SUES CUSTOMER FOR NEGLIGENTLY SUPPLYING HIM A DEFECTIVE LADDER

A truck driver from a U.S. company was dropping off a trailer at a customer's site in Saskatoon. Now he just had to re-install exhaust pipes that had been removed for transport. He asked for and received

a ladder he could use to do the job. The ladder collapsed and the driver fell, suffering serious injuries. Since he didn't work for the company, he was able to sue it for damages without being barred by workers comp. But the Saskatchewan court dismissed the case. There was no evidence to show that the ladder was defective. And even if there were, it wouldn't prove that the company was liable. Explanation: The driver's claim for damages was based on 2 theories—negligence and occupier's liability laws. To make out a case under either law, the driver had to show the company violated its duty of care to him as a visitor to the property. And that duty didn't include inspecting the ladder for defects before giving it to the driver to use. The driver appealed but the Saskatchewan Court of Appeal found the ruling reasonable and refused to overturn it [[Casbohm v Winacott Spring Western Star Trucks](#), 2021 SKCA 21 (CanLII), February 3, 2021].

HARASSER WITH HISTORY OF ABUSING CO-WORKERS DOESN'T GET HIS JOB BACK

"In 12 years of playing poker [here], I have never seen one Casino Regina employee treat a fellow employee so derisively." So testified a customer, one of 5 witnesses to come forward to describe the abuse a dealer dealt out to co-workers, one a female dealer of indigenous descent and the other a server of Asian origin. As even the union acknowledged, the comments made within earshot of customers were derisive, abusive and totally unacceptable. The question was whether the dealer

deserved to be fired for making them. Yes, insisted the employer, and the Saskatchewan arbitrator agreed, noting not just the things the dealer said but his initial lack of remorse and failure to apologize and his history of discipline for harassing and mistreating co-workers [[Saskatchewan Gaming Corporation - Casino Regina v Public Service Alliance Of Canada](#), 2021 CanLII 5520 (SK LA), January 25, 2021].

STEEL COMPANY FINED NEARLY \$1 MILLION FOR SEPARATE SAFETY INCIDENTS

February 9 turned out to be an expensive day for a steel and mining firm that wracked up \$935,000 in penalties for 2 OHS violations stemming from separate incidents. The first involved a worker who got pinned against the steel plate of a conveyor after slipping on ice and snow while rolling a heavy pipe. Cost: \$257,142 + \$102,858 surcharge = \$360,000. The second incident occurred just a few weeks later when a worker suffered a serious machine injury while trying to extinguish a grease fire leading because the machine wasn't properly guarded. Cost: \$410,714 + \$164,285 surcharge = \$575,000 [[EVRAZ Inc. NA, Govt. Press Release](#), February 18, 2021].

UNSUPPORTED SUSPICIONS NOT ENOUGH TO REQUIRE POST-INCIDENT DRUG TESTING

A safety-sensitive refinery worker was the prime suspect for inflicting roughly \$1,100 worth of bumper

damage to a truck he admitted to commandeering for personal use during his shift. As a result, he had to undergo testing, which came back positive for marijuana, ultimately leading to his termination. No dice, said the Saskatchewan arbitrator. For one thing, the employer's suspicions which weren't supported by any other evidence, wasn't adequate grounds to make the worker submit to post-incident testing; and even if they had been, the positive test didn't prove he was high because the company's metabolic standards for impairment were too low. By the same token, the worker deserved to be disciplined for lying about his marijuana use. But the arbitrator knocked the penalty down to a 6-month suspension, provided that the worker submit to and pass random testing for 12 months after he returned [[Gibson Energy \(Moose Jaw Refinery Partnership\) v Unifor, Local \(Mike Chow\)](#), 2021 CanLII 16446 (SK LA), February 16, 2021].

EMPLOYER WOULD HAVE HAD JUST CAUSE BUT MESSED UP TERMINATION PROCEDURE

Facebook published a *StarPhoenix* article lamenting a tragic 2016 shooting that killed 4 and injured many others in which the shooter and most of the victims were Indigenous. A CNR employee posted the following remarks in response. “*End white privilege. Bitch if it weren't for white people you lazy f****s would [be] running around scalping each other and living in teepees.*” CNR fired the employee for the remarks. All agreed that the

remarks were “abhorrent” and that the employee deserved to be terminated for making them. Unfortunately, the bad guys don't always lose. The problem was that CNR didn't follow the investigation procedures required under the collective agreement. So, the arbitrator found the termination invalid. The appeals court reversed but the Saskatchewan Court of Appeal had the final word, ruling that the arbitrator's decision was “defensible” and shouldn't have been overturned [[Teamsters Canada Rail Conference v Canadian National Railway Company](#), 2021 SKCA 62 (CanLII), April 15, 2021].

COURT SENDS CUSTOMER TO JAIL FOR VIOLENT REFUSAL TO WEAR A MASK

A hardware store attendant politely asked a customer wearing a plastic face shield to remove it and put on a cloth face mask required by COVID restrictions. The customer flew into a rage. He screamed and yelled at the attendant. Then, when the manager arrived, he began throwing punches and shoved an employees into the counter. The histrionics continued for a long period, including after he left the store where the customer shoved another employee, age 62, who wanted to help in the parking lot. Saskatchewan judge found it all quite appalling and sentenced the customer to 4 months in jail, follow by 12 months' probation. A conditional, rehabilitative sentence wouldn't be enough to deter others from engaging in this kind of conduct, he reasoned [[R v Russell](#), 2021 SKPC 31 (CanLII), May 28,

2021].

FAILURE TO GUARD CONVEYOR RESULTS IN ENTANGLEMENT DEATH AND \$350,000 FINE

A worker clearing a conveyor system chute lost his life when his leg became entangled in the conveyor. The employer, a mid-sized Regina paving company, was found guilty of 2 OHS offences, including failure to:

- i. Provide necessary safety training, information and instruction; and
- ii. Safeguard workers from making contact with the moving parts of a machine.

The question was how big the fine should be. The Saskatchewan court decided on \$175,000 per violation, enough to sting the company, deter others and bring solace to the victim's family but not enough to drive the company out of business [[R. v. BLS Asphalt Inc.](#), 2021 SKPC 34 (CanLII), June 22, 2021].

YUKON TERRITORY

LAWS & ANNOUNCEMENTS

BORDER RESTRICTIONS

May 25: Yukon implemented a vaccination passport system allowing people to enter the territory without having to self-isolate as long as they sign a declaration stating that they've been fully vaccinated and give the government consent to verify their vaccination status.

CONTACT TRACING

Dec 7: Yukon restaurants and bars must maintain a daily list of patrons for use in contact tracing. One person in each party must sign in and provide contact information on sheets which the restaurant or bar must keep for 30 days and provide to Yukon Communicable Disease Control if an exposure is identified.

COVID-19 ENFORCEMENT

Feb 3: Yukon has received more than 1,400 complaints of COVID public health order violations resulting in 48 charges. Most common offence: Failure to self-isolate (791) followed by failure of people traveling through Yukon to get out within 24 hours or stay on their designated route (432). Not wearing a mask is a distant third with 80 complaints.

COVID-19 RESPONSE

Dec 8: As expected, Yukon extended its state of emergency for another 90 days so it can continue adopting emergency measures to battle COVID. Effective December 1, non-medical face masks became mandatory in all public indoor spaces, including the elevators and common areas of office buildings.

Jan 4: Yukon's territory-wide COVID-19 Vaccine Strategy got underway in White Horse with elderly and vulnerable populations and caregivers the first priority. The territory expects to get enough doses of the Moderna vaccine to vaccinate 75% of its adult population by the end of March.

Mar 11: Don't travel out of territory unless you have to. The renewed warning from the Yukon Chief Medical Health Officer comes less than a week after the territory released its new plan for periodically scaling back COVID public health restrictions. One of the key items on the Path Forward agenda: Adjusting self-isolation requirements to support businesses who rely on employees or clients from outside the territory.

May 5: While most of the country is shutting down, Yukon is moving in

the other direction. Effective May 25, travelers who can prove that they're fully vaccinated will be allowed into the territory without having to self-isolate. They'll also be able to enjoy in-person dining as restaurants and bars will be allowed to return to 100% capacity on that same date.

May 25: With vaccines trending up and cases trending down, Yukon loosened public health restrictions to allow:

- Bars and restaurants to return to full capacity table service
- Social bubbles to increase to 20 people
- Indoor gatherings of up to 20 people and outdoor gatherings of up to 100
- Funerals, organized events, funerals, wedding, gyms and recreation centres to increase to 200 people.

DOMESTIC VIOLENCE

Jul 8: Yukon proclaimed Bill 10 giving employees 5 days' paid and 5 days' unpaid domestic and sexual violence leave. Highlights:

- If needed, unpaid leave can last up to 15 weeks, either non-consecutively or all at once with employer's consent
- All employees eligible for 5 days' unpaid leave but 90 days of employment required for paid and 15 weeks' unpaid leave
- Employer can require notice but not proof of leave.

DOMESTIC VIOLENCE LEAVE

Nov 9: [Bill 10](#) providing paid and unpaid leave to employees who experience, or whose child or a person to whom the employee provides care or support experiences domestic or sexualized violence, passed the Yukon Assembly and will take effect as soon as the government creates the necessary education and support materials. The Bill gives employees with 3 or more months of continuous service up to 5 days' paid and 15 weeks' unpaid leave to deal with a domestic or sexualized violence situation. All employees will qualify for unpaid short-term leave once they start employment.

MEDICAL TRAVEL

Jan 1: Yukon doubled the travel subsidy for patients who must travel outside the territory to receive medical care to \$150 per day for trips lasting longer than one day; the daily allowance for same-day travel is \$75. Going forward, the allowance amount will be indexed each year based on the Consumer Price Index, starting in 2022.

MENTAL HEALTH

Dec 3: The WCHSB announced that it has partnered with the University of Fredericton to offer [workplace psychological health and safety programs](#) to employers and workers at discounts of up to 70%.

OHS REFORM

Mar 10: After 2 years of study and public engagement, Yukon finally

tabled massive *OHS Act* reform legislation. Highlights of [Bill 22](#):

- Clarified duties for employers, supervisors, workers and other workplace parties
- Mandatory hazard assessment in all workplaces and OHS management systems in larger workplaces
- New power of government to impose administrative monetary penalties for OHS violations, with a 1-year statute of limitations
- Higher maximum penalties for OHS violations, with a 2-year statute of limitations.

PPE

May 4: With the school year coming to an end, the Yukon School Board to make face masks optional for most students while they're in the classroom, provided that they maintain social distancing. Mandatory face masks in public schools has provoked angry opposition from parents since the rule was announced.

RECYCLING

March 8: [Comments](#) ended on whether Yukon should ban single-use shopping bags. The MOE's proposal covers both paper and plastic bags, except for:

- Prescription bags provided by pharmacists
- Bags sold as products for waste
- Bags sold as products for snacks, sandwiches or freezer-type bags

- Bags provided as primary packaging for food, produce, bakery items, meat, fast food, deli items, and hardware bulk items.

SMALL BUSINESS

Jun 24: The federal government announced that it will provide up to \$550,000 to support local small businesses and activities to promote shopping locally across Yukon. The Shop Local program money will be channeled through territorial chambers of commerce.

WORKERS COMP

Dec 4: The YWCHSB announced that it's increasing the 2021 workers comp maximum wage rate from \$90,750 to \$91,930.

Jan 21: Not surprisingly considering how many workers were unable to work as a result of the pandemic, the Yukon WCHSB had a surplus in 2020 and will hand out \$10 million worth of rebates to eligible employers. If you have assessable payments owing for 2020, the rebate will first go to paying down the owed amount.

Mar 10: Yukon tabled [Bill 22](#), proposing sweeping changes to its workers comp system. Highlights:

- Allow additions to list of cancers presumed work related for firefighters
- Canada Pension Plan disability benefits no longer subtracted in determining worker's loss of earnings benefits

- Increasing loss of earnings benefits to 100% of pre-work-related injury earnings for low-income workers
- Increasing entitlement to loss of earnings benefits for older workers from 24 to 48 months
- New compensation benefit of \$15,000 to spouse of deceased worker to cover funeral expenses
- Simplified appeal process for workplace health and safety, compensation, assessment and administrative penalties
- Cut time period to appeal workers comp claims from 2 years to 1 year and assessments from 180 days to 90 days.

take effect on Sept. 4, 2021, require employers to perform harassment and violence hazard assessments, implement prevention policies and programs, investigate complaints and provide awareness training. In addition, employers will also have to take steps to control the risk of domestic violence in the workplace to the extent they're aware or should reasonably be aware of threats.

Feb 25: The Yukon WCHSB launched an outreach campaign to educate employers about their obligations under the new OHS workplace harassment and violence prevention regulations that officially take effect on September 4, 2021.

Jun 28: The YWHSB began holding video educational sessions to help employers prepare for the sweeping new OHS workplace violence and harassment prevention regulations that take effect on September 4, 2021.

WORK INJURIES

May 18: Key statistics from the YWCHSB's newly tabled [2020 Annual Report](#) (as compared to 2019):

- YWCHSB funded position: 132% (141%)
- Lost-time injury rate: 1.6 per 100 workers (1.9)
- Claims: 994 (1,190)
- Accepted claims: 795 (1,004)
- Permanent impairment awards: 15 (22)
- Fatalities: 2 (3).

WORKPLACE VIOLENCE & HARASSMENT

Nov 1: Yukon has gone from having no regulations to having some of the most progressive [OHS workplace violence and harassment regulations](#) in Canada. The new rules, which will

CASES

HEAVY EQUIPMENT COMPANY FINED \$60,000 FOR IMPROPER DISPOSAL OF SOLID WASTE

Six-figure fines for environmental offences are relatively rare in Yukon. A Watson Lake company was on the receiving end of the latest one, a \$60,000 fine for improper disposal of untreated brush, wood products and other solid waste without a permit, including one incident of burning [*Northern Enviro Services*].