

Year-End Compliance Briefing: Alberta

2018 OHS Year In Review



2018 OHS LEGISLATIVE & REGULATORY HIGHLIGHTS

Alberta was, by far, the most active jurisdiction for new lawmaking. The centerpiece was Bill 30, the massive reform bill designed to modernize the province's OHS and workers' comp rules after decades of neglect. The big story of the year were the Bill 30 changes that were phased in at various points during the year.

April 1: First wave of Bill 30 workers' comp changes take effect. (See 'Year In Workers' Compensation' below for details).

April 12: New traffic safety rule takes took effect exempting Sikhs who wear turbans from motorcycle helmet laws; exemption does **not** apply to OHS rules requiring workers exposed to risk of head injury to wear appropriate head protection.

April 23: Government ordered to create new OHS regulations implementing Bill 30 required certification training for JHSC co-chairs and health and safety representatives.

June 1: Bill 30 OHS changes take effect:

OHS Provision	Summary of Changes
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New Employer Duties	<ul style="list-style-type: none"> * Protect others at or near site who may be affected by hazards * Make workers aware of their OHS rights and duties * Ensure none of its own workers are subject to or participate in violence or harassment at site * Ensure supervisors are competent & familiar with OHS laws and work done at site <ul style="list-style-type: none"> * Consult & cooperate with JHSC * Give names of supervisors to prime contractor if one is required for site * Ensure workers are properly trained before doing work duties and after transfers, reassignments and changes to equipment or operations
Specific Supervisor Duties	Addition of express supervisor duties to OHS Act, including competent supervision, obeying OHS laws, taking reasonable precautions, ensuring proper PPE use, etc.
New Worker Duties	<ul style="list-style-type: none"> * Protect others at or near site who may be affected by work * Refrain from causing or participating in harassment or violence * Report unsafe conditions or concerns to supervisor
New Duties of Other Parties	<ul style="list-style-type: none"> * Suppliers * Service providers * Owners * Contractors & prime contractors * Self-employed persons
Safety Duties for Temporary Staffing Agencies	Alberta becomes first jurisdiction to add specific safety duties for temp agencies to its OHS laws, including taking 'reasonably practicable' steps to ensure safety of workers they place at clients' work sites
Mandatory Prime Contractors	Mandatory to appoint prime contractor at multi-employer oil and gas sites and other sites designated by Director
Safety Information	<p><u>New employer/prime contractor/self-employed person duty to:</u></p> <ul style="list-style-type: none"> * Make OHS Act, Regs. and Code and info on work site hazards, manufacturer specifications for equipment or harmful substances supplied and copies of any report, plan or procedures required 'readily available' to workers, JHSC et al. * Post OHS orders or Director notices in workplace
Beefed Up Role for Joint Health & Safety Committee (JHSC) and Health & Safety Representative (HSR)	<ul style="list-style-type: none"> * JHSC now required at sites with 20 or more workers where work expected to last 90 days or more * HSR required at sites with 5 to 19 workers where work expected to last 90 days or more * JHSC must have at least 4 members and meet at least quarterly <ul style="list-style-type: none"> * Employer or prime contractor must meet with HSR regularly * JHSC/HSR duties include <ul style="list-style-type: none"> 'Considering workers' safety concerns and complaints 'Participating in hazard identification 'Developing, promoting and monitoring safety measures & education programs 'Making recommendations 'Regularly inspecting the work site

Broader Work Refusal Rights	<ul style="list-style-type: none"> * Refusal easier to justify 'must be reasonable grounds to believe danger exists (requirement that danger be 'imminent' eliminated) * Employer must still investigate but now, if reasonably practicable and not dangerous, refusing worker + JHSC worker co-chair (or HSR) must be present during investigation * Refusing worker gets paid (or may be reassigned with equal pay) while investigation takes place
Beefed Up Worker Reprisal Protections	<ul style="list-style-type: none"> * Protected activity includes refusing dangerous work, giving safety-related info to employer, supervisor, JHSC/HSR or govt., being on or trying to establish JHSC * New burden of proof on employers to show that disciplinary action is NOT reprisal * Stronger penalties for reprisals
Stricter & More Specific OHS Program Requirements	<ul style="list-style-type: none"> * OHS Program now required at sites with 20 or more workers * Program must include: <ul style="list-style-type: none"> o An OHS policy o Identification of hazards to workers (including harassment and violence) o Measures to eliminate, reduce or control hazards o An emergency response plan o Stated responsibilities of employers, supervisors and workers o A schedule and procedures for regular site inspections o Health and safety procedures o Worker & supervisor health and safety orientation & training o Procedures to investigate incidents, injuries and work refusals o Procedures for reviewing and revising OHS Program
Stricter Incident Reporting Requirements	<ul style="list-style-type: none"> Broader list of serious workplace injuries and incidents that must be reported, including near misses and incidents involving any hospital admission (elimination of requirement that admission must last 2 or more days)
Tougher OHS Enforcement	<ul style="list-style-type: none"> * Expanded powers of govt. officers to inspect work sites or investigate injuries and incident, including power to interview persons not present at work site when incident occurred * Expanded powers of govt. to issue and enforce stop work order and stop use order (equipment) provisions * Right of workers to continue to be paid (or reassigned with equal pay) during a stop work order/stop use order * Greater power of courts to impose and oversee creative sentences for OHS violations * Revised procedures for appealing OHS fines and penalties

June 1: New workplace violence protections for gas station and retail convenience stores under Bill 19 take effect.

September 1: Second wave of Bill 30 workers' comp changes take effect. (See 'Year In Workers' Compensation' below for details).

September 1: New employment rules for young workers take effect.

September: WCB reports 20% increase (70 v. 60) in Alberta work fatalities in first 6 months of 2018, as compared to first half of 2017.

November: WorkSafeBC launches process safety inspection campaign.

December 1: New OHS Code farm safety rules take effect to increase protection for waged, non-family workers on farms and ranches.

THE YEAR IN OHS ENFORCEMENT

Total OHS inspections and fines were up, but fine amounts were slightly down, with only a pair reaching 6 figures.

5 Highest OHS Fines Reported in Alberta in 2018 (thru Dec. 10)

FINE	VIOLATOR	TRIGGER INCIDENT	VIOLATION(S)
\$300K	City of Edmonton	Street sweepings spill out of dump truck fatally engulfing one of the workers unloading them	Failure, as employer, to ensure containment of materials that could be spilled, moved or dislodged
\$172.5K + 2 years' corporate probation	The Driving Force Inc.	Mechanic killed after being rolled out by vehicle he was repairing from underneath	Failure, as employer, to ensure health and safety of a worker
\$95K	Nelson Lumber Company Ltd.	Worker using pull saw suffers serious injury when his hand contacts blade	Failure, as employer, to ensure hazardous work carried out by a competent worker
\$90K	WSC Western Canadian Steel Inc.	Failure of fall protection system anchor point causes worker to fall 5.5 metres from roof	Failure, as employer, to ensure that fall protection equipment is contained, restrained or protected resulting in anchor point failure leading to worker's 5.5 metre fall from roof
\$90K	Technoworx Inc.	Disabling of safety interlock system allowed worker to sand material in lathe while it's in motion. <u>Result</u> : Worker pulled into machine and seriously injured	Failure, as employer, to ensure equipment is assembled and operated in accordance with manufacturer's instructions

THE YEAR IN WORKERS' COMPENSATION

Significant workers' comp changes were the flip side of Bill 30. Key developments in 2018:

January 1: First wave of Bill 30 workers' comp changes take effect, including:

- Removal of 0.5% CPI reduction for injured worker benefit Cost-Of-Living Adjustments;
- New lump-sum fatality benefit equal to maximum Non-Economic Loss Payment to spouse, dependent or estate;
- Expanded medical exam options for injured workers;
- New office of appeals advisors to represent non-union workers and employers with fewer than 100 employees in legal proceedings;
- New fair practices office to help workers manage their claims; and
- Streamlined WCB appeals process.

January 19: Expanded cancer coverage for firefighters takes effect.

April 1: Second wave of Bill 30 workers' comp changes take effect, including:

- Extension of presumption that PTSD to EMT workers is work-related to first responders, correctional officers, emergency dispatchers, firefighters, paramedics, police and peace officers; and
- Extension of resumption that myocardial infarction is work-related to paramedics.
- PTSD presumption extended to correctional officers and emergency dispatchers

September 1: Third wave of Bill 30 workers' comp changes take effect, including:

- Return-to-work made mandatory unless workers don't cooperate or employer would suffer undue hardship;
- New Code of Rights and Conduct for workers and employers dealing with WCB;
- Interim relief for workers and employers while their cases are under appeal;
- New process for estimating earning capacity requiring WCB to demonstrate every reasonable effort made to help injured worker's job search;
- Removal of \$98,700 annual maximum insurable earnings cap'workers above cap to get 90% of earnings;
- Increased long-term compensation rates for workers suffering severe injuries before age 25 who enroll in vocational rehab programs; and
- Appeals Commission window extended to 2 years.

Alberta 2019 Workers' Comp Rates

2019 Average Assessment (per \$100 assessable payroll)	2019 Maximum Assessable Earnings	2018 Average Assessment (per \$100 assessable payroll)	2018 Maximum Assessable Earnings	2019 Filing Deadline (based on final 2 digits of account number)
\$1.08	\$98,700	\$1.04	\$98,700	Feb. 28

TOP 5 OHS CASES

Here's a summary of what OHSI voted the 5 most significant work safety cases decided in Alberta in 2018.

1. Mere Occurrence of Accident Doesn't Prove Employer Committed OHS Violation

An important ruling from the Alberta Court of Appeal in a case involving the tragic death of a drilling rig floorhand clarified that an employer isn't presumed to have committed an OHS violation just because an accident occurs. While that may sound like a technicality, its significance becomes clear when you consider what the consequences had the case gone the other way. Being able to point to the accident as proof of violation would have given the Crown a major advantage in OHS prosecutions and put the burden on employers to show they were not guilty of the offence [*R v Precision Diversified Oilfield Services Corp*, 2018 ABCA 273 (CanLII), Aug. 22, 2018].

2. Near Miss = Grounds for Post-Incident Drug Testing

Two electrical workers had to undergo post-incident drug and alcohol testing after being involved in a near miss with a heavy vehicle. The union didn't argue that the testing policy itself was illegal; it claimed the company didn't have grounds to apply it in this situation since it resulted in only minor property damage. But the arbitrator disagreed. A near miss in which nobody gets hurt may be enough to trigger post-incident testing if it has the potential to cause serious injury. Moreover, the company didn't call for testing willy-nilly but only after making the determination that the incident was the result of human error, that drugs/alcohol *might have* caused that error and that testing should be used to rule out that suspicion. While acknowledging that it was a close case, the court found the arbitrator's ruling reasonable and refused to overturn it [*Canadian Energy Workers' Association v ATCO Electric Ltd*, 2018 ABQB 258 (CanLII), April 4, 2018].

3. No 'Cognitive Testing' for Safety-Sensitive Transit Operators

After 2 pedestrian accidents, the City unilaterally imposed a new policy requiring transit system operators to undergo tests screening for cognitive impairments that may affect their ability to drive safely. The union contended the policy was unreasonable and the Labour Board agreed by a vote of 2 to 1. The test was highly intrusive. And there was no evidence showing that operators' cognitive impairment caused previous accidents or posed any specific safety issue for that matter. The mere fact that the work was safety-sensitive wasn't enough to ride roughshod over the operators' privacy rights especially give the unreliability of the tests, the majority concluded [*Amalgamated Transit Union, Local No. 569 v Edmonton (City)*, 2018 CanLII 82319 (AB GAA), Aug. 27, 2018].

4. Employer Didn't Offer Injured Construction Worker 'Suitable Work'

A road crew construction worker returning after suffering broken ribs and soft tissue injuries in a work accident was offered seasonal flag person work and any light duties not requiring repetitive lifting as the became available. The worker claimed the offer wasn't 'suitable work' under workers' comp return to work requirements. The WCB agreed finding that the work offered wasn't a real position, only a patchwork list of job duties with no real job description and no indication as to the physical, vocational and location requirements. The employer appealed but the court ruled that the WCB ruling was reasonable and refused to overturn it [*In-Line Contracting Partnership v Alberta (Workers' Compensation Appeals Commission)*, 2018 ABQB 529 (CanLII), July 10, 2018].

5. No Firing Worker When Another Worker Gets Written Warning for Same Offence

Discipline for safety infractions must be not only fair but also consistent. That's the moral of this case that began when a mining supervisor caught one of his workers operating a haul truck with wearing a seat belt. After ordering him out of the vehicle, the supervisor then discovered that the shoulder belt had been jammed into the retracting mechanism with the shoulder belt hanging loosely next to the operator's seat. The worker was fired for violating the company's strict mandatory seat belt policy and deliberately disabling a safety device. Normally, I would have upheld dismissal for this kind of violation, especially given the safety-sensitive nature of the workplace, said the arbitrator. The problem was that 8 months later, a worker caught using duct tape to disable the retracting device of his haul truck got off with just a written warning. So, what to do next' Firing the first offender was too harsh; but reinstating him

after his serious safety offences was unrealistic. So, the arbitrator said the company had to pay him wrongful dismissal damages instead [*North American Mining Inc. v International Union of Operating Engineers, Local Union No. 955*, 2018 CanLII 101945 (AB GAA), Oct. 26, 2018].

WHAT TO EXPECT IN 2019

One of the first things on the 2019 agenda is for the Ministry to publish the JHSC co-chair/health and safety representative certification training standards and list of approved providers. The Ministry is warning employers to 'be wary' of providing that training unless and until the standards and approved provider list come out.

Another key change in the pipeline are the new entry-level safety training for Class 1 and Class 2 truck drivers adopted in the wake of the Humboldt Broncos hockey team bus tragedy that take effect on March 1, 2019.