

# 2018 OHS Act Changes

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Bill 30: Act to Protect the Health and Well-being of Working Albertans

# Consultation Summary

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- A comprehensive review of Alberta's OHS system was undertaken in 2017
  - Alberta had not reviewed its OHS system since 1976
- Received input from Albertans over a nine-week period
  - Over 1,300 online survey responses
  - Nearly 90 written submissions
  - Eight in-person facilitated roundtable discussions involving over 200 stakeholders representing employers, workers, OHS professionals, health and safety associations and academics

# Consultation Summary

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- Highlights of feedback received:
  - Responsibility
  - Worker Engagement
  - Prevention

# Coming into Force

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- The new OHS Act will come into effect on June 1, 2018
- These provisions came into effect on December 15, 2017:
  - OHS Council
  - Appeals

# What's Changed?

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- Anything **new** is in **orange** text

# Key Concepts in Canadian OHS Law

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- Internal responsibility
  - Everyone in the workplace is responsible for OHS, according to the their authority and control
  - Internal monitoring by HSCs or health and safety representatives
  - External monitoring and enforcement by government
- Three fundamental rights of workers
  - Right to know
  - Right to participate
  - Right to refuse dangerous work

# Purpose of the OHS Act

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- Promotion and maintenance of physical, psychological and social well-being of workers
- Prevent workplace incidents, injuries, illness and disease
- Protect workers from conditions adverse to their health and safety
- Protect worker rights to:
  - Know about health and safety hazards
  - Participate in OHS
  - Refuse dangerous work
  - Exercise their OHS rights or fulfill their duties without fear of reprisal (discriminatory action)

# Three Rights

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# Right to Know

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- All employers must inform workers about potential hazards and have access to basic health and safety information on site

# Right to Participate

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- Ensures workers are involved in health and safety discussions, including participation in health and safety committees

# Right to Refuse Dangerous Work

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- A worker may refuse to do work where they believe on reasonable grounds it is dangerous to them or others.
- The worker must promptly report the refusal to the supervisor or employer.
- If the supervisor or employer cannot remedy the issue immediately, they must inspect the dangerous condition with the refusing worker and a member of the HSC or representative to resolve the issue/remedy the danger.
- If the matter is still not resolved it may be referred to an OHS officer, who will resolve the matter.
- No loss of pay or benefits for worker exercising right to refuse.
- Another worker may be assigned to do the work if they are advised of the refusal, the reason for the refusal, and advised of their right to refuse.

# Workers Protected from Discriminatory Action

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- **Discriminatory action** is any action or **threat of action** by any person that would adversely affect a workers with respect to terms or conditions of employment, or opportunity for promotion.
  - Includes termination, layoff, suspension, demotion or transfer of a worker, discontinuation of job, change of job location, reduction of wages, change of hours, reprimand, coercion, intimidation or imposition of discipline or penalty.
- No person may take any discriminatory action against a worker for fulfilling their duties under legislation or exercising their OHS rights.
- Discriminatory action complaints are referred to an OHS officer, who investigates and resolves the complaint.
- **Onus is on employer to show action taken against worker was for reason other than fulfilling an OHS duty or responsibility.**

# Responsibilities of Work Site Parties

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# Employers

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- Ensure health, safety and welfare of workers and other persons at the work site
- Ensure workers are aware of OHS rights and duties
- Ensure workers are not subjected to or participate in harassment or violence
- Ensure workers have competent supervision
- Ensure workers are properly trained
- Consult and cooperate with HSCs or health and safety representative and resolve issues in a timely manner
- Ensure prime contractor is advised of names of supervisors
- Cooperate with any person exercising duty under legislation
- Comply with legislation

# Supervisors

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- Ensure they are competent to supervise workers
- Take all precautions to protect worker health and safety
- Ensure workers work accordance requirements of legislation
- Ensure workers use hazard controls and personal protective equipment
- Ensure workers are not subjected to or participate in harassment or violence
- Advise workers of all known or reasonably foreseeable hazards
- Report OHS concerns
- Cooperate with any person exercising duty under legislation
- Comply with legislation

# Workers

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- Take reasonable care to protect their own health and safety and health and safety of others at the work site
- Cooperate with supervisor, employer, or any other person to protect their health and safety,
- Use safety devices and wear personal protective equipment
- Refrain from causing or participating in harassment or violence
- Report OHS concerns
- Cooperate with any person exercising duty under legislation
- Comply with legislation



# Suppliers

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- Ensure products and equipment comply with the legislation
- Ensure products and equipment supplied are safe when used according to manufacturer specifications (includes leased equipment)
- Maintain equipment in safe condition
- Provide notice when their product or equipment does not comply with legislation
- Cooperate with any person exercising duty under legislation
- Comply with legislation

# Service Providers

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- Ensure a service provided to help a person meet an obligation under OHS legislation achieves that objective
- Ensure the service complies with OHS legislation
- Ensure the service is provided by a competent worker
- Ensure the service does not create a hazard to others on the work site
- Cooperate with any person exercising duty under legislation
- Comply with legislation

# Owners (of land or premises of worksite)

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- Excludes a private residence unless business located there
  - Ensure property and premises that is under their control do not endanger health and safety
  - Cooperate with any person exercising duty under legislation
  - Comply with legislation

# Contractors

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- Person or group of persons who contract with and direct the work of employer or self-employed person
  - Ensure the work site and work processes under their control do not endanger health and safety
  - Advise prime contractor of the names of employers or self-employed persons working under the direction of the contractor
  - Cooperate with any person exercising duty under legislation
  - Comply with legislation

# Prime Contractor

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- Required on construction or oil and gas work sites (or a work site designated by a Director) with 2 or more employers or self-employed persons
  - Establish a system to ensure compliance with legislation
  - Co-ordinate, organize and oversee work to ensure health and safety of workers and others
  - Ensure their own activities do not create a hazard to the health and safety of others
  - Consult and co-operate with the HSC or health and safety representative
  - Co-ordinate the health and safety programs of employers and self-employed persons on the work site
  - Cooperate with any person exercising duty under legislation
  - Comply with legislation

# Self-Employed Persons

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- Conduct their work in a way that protects them and others from health and safety hazards
- Advise prime contractor that they are working on the project
- Report OHS concerns
- Cooperate with any person exercising duty under legislation
- Comply with legislation

# Temporary Staffing Agencies

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- Ensure workers assigned to another employer are suitable for the work
- Ensure worker is equipped or will be equipped with necessary personal protective equipment
- Ensure the other employer is capable of protecting the health and safety of the workers
- Cooperate with any person exercising duty under legislation
- Comply with legislation

# Harassment and Violence Definitions

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# Harassment and Violence Defined

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- “harassment” means any single incident or repeated incidents of objectionable or unwelcome conduct, comment, bullying or action that causes offence or humiliation to a worker, or adversely affects the worker’s health and safety, and includes
  - i. conduct, comment, bullying or action because of race, religious beliefs, colour, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status, gender, gender identity, gender expression, and sexual orientation, and
  - ii. sexual solicitations or advance.
- but excludes any reasonable conduct or an employer or supervisor in respect of their management of the workers or a work site.
- “violence” threatened, attempted or actual conduct of a person that causes or is likely to cause physical or psychological injury or harm, and includes domestic or sexual violence.

# Joint Work Site Health and Safety Committee (HSC) and Representative (HS representative)

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# HSC and HS representatives

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- Employer or prime contractor required to establish a HSC for a work site with 20 or more workers
  - Director may approve other forms of HSC where necessary
- HS representative required for work site or project with 5 to 19 workers
- Requirements apply to work that will last 90 days or more
- Training required for HSC co-chairs and HS representatives
  - When HSC members or HS representatives provide reasonable notice, they are permitted up to 2 days to attend OHS education or training
- No loss of pay or benefits for HSC members or HS representatives when carrying out duties or participating in OHS training or education

# Duties of HSC and HS representatives

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- Receipt, consideration and disposition of health and safety concerns and complaints
  - Participate in hazard identification
  - Develop and promote measures to protect the health and safety at the work site and check effectiveness of the measures
  - Co-operate with an OHS officer
  - Develop and promote programs for OHS education and information
  - Make recommendations respecting OHS
  - Inspect the work site at regular intervals
  - Participate in investigations of serious injuries and incidents at the work site
  - Maintain records of activities and meetings
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- HS reps, in cooperation with employer, perform same duties with necessary modifications

# Employer and Prime Contractor to Work With HSC or HS representatives

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- When HSC or HS representatives makes a recommendation to remedy an OHS matter, the employer:
  - Resolves the matter within 30 days, or
  - Responds in writing how and when the concern will be addressed, or
  - If employer or prime contractor disagree with recommendation provide reasons for not addressing the matter
- If the matter cannot be resolved, any of the parties can refer it to an OHS officer for resolution

# Health and Safety Program

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# Health and Safety Program

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- An employer with 20 or more workers is required to establish a health and safety program in consultation with HSC and implement the program
- Program elements:
  - OHS policy
  - Hazard assessment
  - Emergency response
  - Responsibilities of work site parties
  - Schedule and procedure for inspections
  - Procedures to deal with OHS issues when another employer or self-employed person works on site
  - Orientation and training
  - Incident investigation
  - Procedure for worker participation
  - Review and revise program every three years or when conditions change
- Smaller workplaces required to involve workers in hazard assessment and control

# Reporting

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# Reporting Serious Injuries and Incidents

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- Employers or prime contractor must report:
  - Incident resulting in death of worker
  - Incident resulting in hospitalization of worker
  - Explosion, fire, or flood that has potential to cause serious injury
  - Collapse of crane, derrick or hoist
  - Collapse or failure of building or structure
  - Significant mining incidents (ground fall, ventilation failure, out of control vehicle, fire, serious electrical failure hoist or shaft failure, dam failure, other emergency)
- Incidents with potential to cause serious injury (“near misses”) must also be reported

# Medical Assessments

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- Medical examination to determine extent of injury or presence of occupational disease:
  - May only occur with the consent of the worker
  - Medical examination considered time at work
- When physician or other health care professional treats a person with a notifiable occupational disease, they must notify Director of Medical Services
- Report of medical examination must be provided to Director of Medical Services on request
- Other reports with information related to worker with occupational disease provided to Director of Medical Services on request
- Director of Medical Services may access information to prevent occupational injury and disease

# Enforcement and Compliance

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# Enforcement Tools

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- Order to remedy unhealthy or unsafe conditions
  - Must identify contravened provision of legislation
  - State reasons for order
  - Require corrective measures within specified period of time
  - OHS officer may extend the timeframe for compliance
  - Order remains in effect until compliance achieved or the order is withdrawn by the officer or revoked on review or appeal

# Stop Work/Stop Use Orders

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- Stop work orders
  - Issued when OHS officer determines there is a danger to health and safety
  - Orders can stop work, or any part of the work, clear the work site and require measures to remove the source of danger
  - Stop work order may be issued on multiple work sites of an employer
- Stop use orders
  - Issued when OHS officer determines equipment is not safe to operate or a harmful substance is not safe to use
  - Equipment subject to order may not be sold, rented, leased or transferred
  - OHS officer may order supplier to stop supplying the unsafe substance or material
- Affected workers may be reassigned to other work, but receive the same wages and benefits

# Report on Compliance

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- The person who received an order is required to:
  - Report to the OHS officer on the measures taken or planned to be taken to remedy the contravention within 7 days of compliance date specified in order
  - Provide a copy of the report to the HSC or health and safety representative, if one exists
  - Post the report at the work site

# Administrative Penalties

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- Requirements unchanged
- Administrative penalty can be issued by an officer when there is:
  - Contravention of the OHS legislation
  - Failure to comply with an order made
  - Failure to comply with a term, condition or requirement of an acceptance
  - Failure to comply with a term, condition or requirement of an approval
  - A false statement or false or misleading information is given to an OHS officer

# Acceptances and Approvals

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- Acceptances

- Director may issue acceptance for an alternative approach to achieving compliance with OHS requirements if Director is satisfied the alternative provides equal or greater protection
- Acceptance may contain terms and conditions
- Director is required to ensure consultation with HSC or health and safety representative, or workers and other affected parties occurs
- Acceptance has time limit of up to 5 years

- Approvals

- Director may issue an approval for work procedures, standards, equipment and training, and set out terms and conditions for the approval
- The Director will, as appropriate, ensure consultation with HSC, health and safety representative or workers and other affected parties occurs
- Approval has time limit of up to 5 years



# Interjurisdictional Recognition and Licences

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- **Interjurisdictional recognition**
  - A Director may recognize an alternate standard or equipment that complies with OHS requirements in another jurisdiction if that standard or equipment provides equal or better protection to workers
  - Interjurisdictional recognition has time limit of up to 5 years
- **Licences**
  - A Director may issue a licence in accordance with the regulations or OHS Code
  - A Director may cancel or suspend licence

# Review of Orders

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- **Director review**

- A person receiving order from an OHS officer may request a review by a Director of Inspections (with exception of discriminatory action orders).
- Director is not required to hold a hearing.
- Affected parties have opportunity to provide submissions.
- The Director must provide reasons for decision.
- Decision may confirm, vary or revoke the order or decision, or a new order may be issued.
- Director may also refer the matter to the Labour Relations Board (LRB).

# Appeal of Orders

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- **Labour Relations Board** appeals
  - Appeals of orders or decisions by Director of Inspection, discriminatory action orders, cancellation of a licence or administrative penalties heard by the LRB.
  - LRB may reject matter when it determines the matter is without merit.
  - LRB conducts a hearing.
  - LRB may confirm, vary or revoke an order or decision.
  - LRB hearing appeals as of Dec 15, 2017.

# Offences and Penalties

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- Penalties:
  - First offence: fine of not more than \$500,000/ for continuing offence, a further fine of not more than \$30,000 each day the offence continues.
  - Imprisonment for up to 6 months.
  - Second or subsequent offence or failure to comply with stop work order: fine of not more than \$1 million, and for a continuing offence a further fine of not more than \$60,000/day.
  - Imprisonment up to 12 months.
- Additional powers of court to make directions
  - Expands the range of creative sentencing options that the court can impose and allows the court to provide oversight.

# Information

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# Duty to Provide Health and Safety Information

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- Health and safety information is information that may affect the health and safety of a person on a work site, but excludes personal information or confidential proprietary information
  - Employer makes OHS information readily available to HSCs, HS rep or workers and the prime contractor.
  - Prime contractor provides OHS information to employers, workers, self-employed persons and other parties working at the work site
  - Owner provides OHS information to workers, employers and other parties working on the property
  - Supplier provides manufacturer's specifications and instructions for equipment and harmful substances
  - Employer makes OHS legislation readily available
  - OHS reports, plans or procedures are in writing and readily available
  - OHS orders or notices are posted or readily available
  - HSC minutes are posted or readily available

# Information Collection and Exchange

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- Agreements for research and educational programs
  - Expand the ability for government to enter into information-sharing agreements with a wider range of parties.
- Exchange of information
  - Allow Alberta Labour to share data with other government bodies, agencies, and external organizations beyond the Workers' Compensation Board.
- Publication of information about employers
  - The government must publish information (statistical information, orders, administrative penalties, acceptances and approvals issued) at regular intervals.

# Information Collection and Exchange

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- Funded organizations
  - Health and safety associations funded from the Workers' Compensation Board submit report to the Minister each year
  - The report will be reviewed and the Minister may provide recommendations on the effectiveness of the association's OHS efforts
- Designated Organizations
  - Government may designate organizations for the purpose of furthering OHS
- Furthering OHS
  - Government may establish and carry out programs to further OHS



# Roles & Responsibilities Within Government of Alberta

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# OHS Advisory Council (OHSAC)

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- Minister is required to appoint an OHSAC
  - Equal representation of employers, workers, and OHS professionals, selected from lists of nominees from organizations representing those groups
- Council provides OHS advice and recommendations to Minister
- Review the OHS Act and administration at the request of the Minister
- Responsibility for making OHS Code now rests with the Minister
- Responsibility for OHS Appeals transferred to Alberta Labour Relations Board
- OHS Council dissolved December 15, 2017. New OHSAC in place June 1, 2018.

# Duties of the Minister

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- Shall be concerned with OHS generally, and maintenance of reasonable standards for protection of the health and safety of workers and self-employed persons
- Responsible for administration of the OHS legislation
- Ensure OHS legislation and its administration is reviewed every 5 years
- Publish annually a 3 year plan for review of regulations and OHS Code
- Consult with workers and employers and recommend changes to regulations and OHS Code
- Ensure OHS information and advice is provided
- Ensure OHS statistics are maintained

# OHS Directors and Officers

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- Powers of a Director
  - Issue acceptances and approvals
  - Issue Director orders requiring a code of practice, a health and safety program, regular inspections of workplace, notice of a new project
  - May require a person to provide any information in the form and manner acceptable to the Director that the Director needs to perform duties or exercise powers under the OHS legislation
  - Has the powers of an OHS officer
- Duties of OHS officers
  - Carry out inspections, investigations, inquiries and out tests necessary to determine compliance with the OHS legislation
  - Investigate work refusals
  - Investigate discriminatory action complaints
  - Take steps, including issuing orders, where appropriate, to ensure compliance with legislation

# OHS Directors and Officers

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- Powers of OHS officers
  - Enter any workplace and conduct an inspection or investigation – except private dwellings
    - If workplace is also private dwelling, OHS officer may only enter with consent of resident or if authorized by a provincial court judge
  - Examine records related to OHS
  - Require and be provided with reasonable assistance
  - Inspect or take samples of material, product, equipment
  - Make tests, take photos, measurements or recordings
  - Require demonstration of machinery and equipment
  - Interview and take statements
  - Request HSC co-chairs or designates, or HS rep to accompany officer during inspection
  - Investigate injuries or incidents at a workplace
  - Require witnesses to an injury or incident to provide information

# Next Steps

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- There are some additional details coming that will provide greater clarity on specific requirements.
  - These decisions have not yet been made by Cabinet.
  - Materials will be made available to inform people of these details.
- The implications of Cannabis legalization and impairment in the workplace are still being determined.

# Thank you

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