

**OTHER REQUIREMENTS RESPECTING
OCCUPATIONAL HEALTH & SAFETY**

1. In these requirements
 - a) “Act” means the *Occupational Health & Safety Act* of the Province;
 - b) “board” means the Labour Relations Board referred to in the *Labour Relations Act*;
 - c) “committee” means an occupational health and safety committee referred to in this Act;
 - d) “council” means the Occupational Health and Safety Council referred to in the Act;
 - e) “C-NLOPB” means the Canada-Newfoundland and Labrador Offshore Petroleum Board;
 - f) “chief safety officer” means the Chief Safety Officer of the C-NLOPB;
 - g) “employer” means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, operator, contractor or subcontractor to perform work or supply services;
 - h) “minister” means the Minister of Employment and Labour Relations for the Province;
 - i) “officer” means an occupational health and safety officer appointed under the Act and includes a medical practitioner providing services under section 20 of the Act while he or she is providing those services;
 - j) “principal contractor” means the person primarily responsible for the carrying out of a project and includes the person who owns the thing in respect of which the project is being carried out;
 - k) “Province” means province of Newfoundland and Labrador;
 - l) “Regulations” means regulations made under the Act;
 - m) “self-employed person” means a person who is engaged in an occupation on his or her own behalf;
 - n) “supplier” means a person who rents or leases tools, appliances or equipment to be used by a worker;
 - o) “worker” means an individual who performs work or supplies services for monetary compensation; and
 - p) “workplace” means a place where a worker or self-employed person is engaged in an occupation and includes a vehicle or mobile equipment used by a worker in an occupation.

2. Employers General Duty

An employer shall ensure, where it is reasonably practicable, the health, safety and welfare of his or her workers.

3. **Specific Duties of Employers**

Without limiting the generality of para. 2, an employer

- a) shall, where it is reasonably practicable, provide and maintain a workplace and the necessary equipment, systems and tools that are safe and without risk to the health of his or her workers;
- b) shall, where it is reasonably practicable, provide the information, instruction, training and supervision and facilities that are necessary to ensure the health, safety and welfare of his or her workers;
- c) shall ensure that his or her workers, and particularly his or her supervisors, are made familiar with health or safety hazards that may be met by them in the workplace;
- d) shall, where it is reasonably practicable, conduct his or her undertaking so that persons not in his or her employ are not exposed to health or safety hazards as a result of the undertaking;
- e) shall ensure that his or her workers are given operating instructions in the use of devices and equipment for their protection;
- f) shall consult and co-operate with the occupational health and safety committee or the worker health and safety representative on all matters respecting occupational health and safety at the workplace;
 - (f.1) shall respond in writing within 30 days to a recommendation of the occupational health and safety committee or the worker health and safety representative at the workplace indicating that the recommendation has been accepted or that it has been rejected, with a reason for the rejection;
 - (f.2) shall provide periodic written updates to the occupational health and safety committee or the worker health and safety representative at the workplace on the implementation of a recommendation accepted by the employer until the implementation is complete;
 - (f.3) shall consult with the occupational health and safety committee or the worker health and safety representative at the workplace about the scheduling of workplace inspections that are required by the regulations, and ensure that the committee or the worker health and safety representative participates in an inspection; and
- g) shall co-operate with a person exercising a duty imposed by the Act or Regulations; and
- h) a representative of the employer has the right to accompany an officer of the C-NLOPB when health and safety inspections are being conducted.

4. **Workers General Duty**

A worker, while at work, shall take reasonable care to protect his or her own health and safety and that of workers and other persons at or near the workplace.

5. **Specific Duties of Workers**

A worker

- a) shall co-operate with his or her employer and with other workers in the workplace to protect:
 - (i) his or her own health and safety,
 - (ii) the health and safety of other workers engaged in the work of the employer,

- (iii) the health and safety of other workers or persons not engaged in the work of the employer but present at or near the workplace;
- b) shall use devices and equipment provided for his or her protection in accordance with the instructions for use and training provided with respect to the devices and equipment;
- c) shall consult and co-operate with the occupational health and safety committee or the worker health and safety representative at the workplace; and
- d) shall co-operate with a person exercising a duty imposed by the Act or Regulations.

6. **Imminent Danger**

A worker shall not

- a) carry out work where there exists an imminent danger to his or her or another worker's health and safety or the health and safety of another person; or
- b) operate a tool, appliance or equipment that will create an imminent danger to his or her or another worker's health or safety or the health or safety of another person.

7. **Health and Safety Program**

- (1) Where 10 or more workers are employed at a workplace, the employer shall establish and maintain an occupational health and safety program in accordance with the regulations.
- (2) An occupational health and safety program shall be established in consultation with the occupational health and safety committee or the worker health and safety representative at the workplace.
- (3) An occupational health and safety program shall include those documents that may be prescribed in the regulations.
- (4) An occupational health and safety program shall be in writing and shall, when requested, be provided to the occupational health and safety committee, the worker health and safety representative, a worker at the workplace and an officer.

8. **Health and Safety Policy**

- (1) Where less than 10 workers are employed at a workplace, the employer shall establish an occupational health and safety policy in accordance with the regulations.
- (2) An occupational health and safety policy shall be established in consultation with the worker health and safety representative and posted in a prominent place at the workplace.

9. **Committees**

Where 10 or more workers are employed at a workplace, the employer shall establish an occupational health and safety committee to monitor the health, safety and welfare of the workers employed at the workplaces.

10. **Membership of Committees**

- (1) A committee shall consist of the number of persons that may be agreed to by the employer and the workers but shall not be less than 2 nor more than 12 persons.
- (2) At least half of the members of a committee are to be persons representing the workers at the workplace who are not connected with

the management of the workplace.

- (3) The persons representing the workers on the committee are to be elected by other workers at the workplace or appointed in accordance with the constitution of the union of which the workers are members.
- (4) Where the employer and workers cannot agree on the size of the committee, the Chief Safety Officer may establish its size.
- (5) The employer shall appoint sufficient employer representatives to ensure that the committee may function.
- (6) The employer and worker members of a committee shall elect a co-chairperson from the respective groups.
- (7) The employer shall post the names of the committee members in a prominent place at the workplace.

11. **Committee Training**

- (1) Where 50 or more workers are employed at a workplace, the employer shall provide and pay for training for the members of the occupational health and safety committee at the workplace.
- (2) Where 10 to 49 workers are employed at a workplace, the employer shall provide and pay for training for the co-chairpersons of the occupational health and safety committee at the workplace.
- (3) The training provided under subsections (1) and (2) shall meet the requirements the Workplace Health, Safety and Compensation Commission may set.
- (4) A member of the committee who is provided training under subsection (1) or (2) shall participate in the training.
- (5) An employer shall compensate a worker for participating in training under this section as if the training were regular work.

12. **Duties of Committees**

A committee established under para. 9

- a) shall seek to identify aspects of the workplace that may be unhealthy or unsafe;
- b) shall participate in a workplace inspection that an employer is required by the regulations to conduct;
- c) may make recommendations to principal contractors, employers, workers, self-employed persons and the Chief Safety Officer or an officer for the enforcement of standards to protect the health, safety and welfare of workers at the workplace;
- d) shall receive complaints from workers as to their concerns about the health and safety of the workplace and their welfare;
- e) shall establish and promote health and safety educational programs for workers;
- f) shall maintain records as to the receipt and disposition of complaints received from workers under paragraph (d);
- g) shall co-operate with the Chief Safety Officer or an officer who is exercising his or her duties under the Act;
- h) shall perform those other duties and follow those procedures that may be prescribed by the regulations; and

- i) a representative of the workers of the occupational health and safety committee has the right to accompany an officer of the C-NLOPB when health and safety inspections are being conducted.

13. **Meetings of Committee**

- (1) Meetings of a committee shall take place during regular working hours at least once every 3 months and a worker is not to suffer loss of pay or other benefits while engaged in a meeting of a committee.
- (2) Minutes of all regular meetings and special committee meetings shall be recorded in the form prescribed by the minister and one copy shall be kept on file with the committee, one copy shall be filed with the C-NLOPB and one copy shall be posted in the workplace.
- (3) A worker health & safety representative shall report to the C-NLOPB in a form prescribed by the minister.
- (4) The occupational health and safety committee at the workplace shall meet within 2 weeks of its formation and shall then select co-chairpersons as required in para. 38 of the Act, and notify the C-NLOPB.
- (5) A quorum shall consist of one-half of the membership of the committee provided that both employer and worker members are represented.
- (6) If agreement cannot be reached between co-chairpersons on the convening of a meeting of the occupational health and safety committee, the chief safety officer will be requested to intervene.
- (7) At a workplace, the chief safety officer may for reason of particular hazards and complexity of operations of large number of workers involved, require meetings of a committee to be held at least monthly.
- (8) Copies of all health and safety inspection reports made by an officer of the C-NLOPB, which in the opinion of the C-NLOPB warrant circulation, shall be circulated to the employer and the occupational health and safety committee or worker health and safety representative.
- (9) Reports not previously circulated but subsequently requested by the employer, the committee or the representative shall be provided.

14. **Worker Representative**

- (1) Where less than 10 workers are employed at a workplace, the employer shall ensure that a worker not connected with the management of the workplace is designated as the worker health and safety representative to monitor the health, safety and welfare of workers employed at the workplace.
- (2) The employer shall provide and pay for training for the worker health and safety representative.
- (3) The training provided under subsection (1) shall meet the requirements the Workplace Health Safety and Compensation Commission may set.
- (4) The worker health and safety representative shall participate in the training provided under this section.
- (5) An employer shall compensate a worker for participating in training under this section as if the training were regular work.

15. **Election of Representative**

The worker health and safety representative is to be elected by other workers at the workplace or appointed in accordance with the constitution of the labour union of which the workers are members.

16. **Posting Name**

The employer shall post the name of the worker health and safety representative in a prominent place at the workplace.

17. **Duties of Representative**

- (1) A worker health and safety representative has the same duties as those imposed upon a committee under para. 12, where that is reasonably practicable.
- (2) A worker health and safety representative shall consult with his or her employer while performing his or her duties under subpara. (1).
- (3) A worker health and safety representative has the right to accompany an officer of the C-NLOPB when health and safety inspections are being conducted.

18. **Right to Refuse Work**

- (1) A worker may refuse to do work that the worker has reasonable grounds to believe is dangerous to his or her health or safety, or the health and safety of another person at the workplace
 - (a) until remedial action has been taken by the employer to the worker's satisfaction;
 - (b) until the committee or worker health and safety representative has investigated the matter and advised the worker to return to work; or
 - (c) until an officer has investigated the matter and has advised the worker to return to work.
- (2) Where a worker refuses to do work under subpara. (1) his or her employer may reassign the worker to other work that is reasonably equivalent to the work he or she normally performs and the worker shall accept the reassignment until he or she returns to work under subpara. (1).
- (3) Where a worker is reassigned to other work under subpara. (2) the employer shall pay the worker the same wages or salary and grant him the same benefits the worker would have received had the worker continued in his or her normal work.
- (4) Where a worker has reasonably refused to work under subpara. (1) and has not been reassigned to other work under subpara. (2) the employer shall pay the worker the same wages or salary and grant the worker the same benefits the worker would have received had the worker continued to work, until he or she is able to return to work under subpara. (1).
- (5) A reassignment of work under subpara. (2) is not discriminatory under para. 22.
- (6) The Chief Safety Officer shall be notified of a refusal to work, where the problem has not been resolved by the employer, and that problem is passed to the occupational health and safety committee or the worker health and safety representative.
- (7) This notification may be made orally but shall be followed up in writing.
- (8) Where action has been taken by a worker to exercise the right to refuse to work under the Act, the employer shall not assign another worker to perform those duties unless the substitute worker has been informed of the prior refusal and the reason or reasons for that refusal.

19. **Report to Supervisor**

Where a worker exercises his or her right to refuse work under para. 18, or where he or she believes that a tool, appliance or piece of equipment, or an aspect of the workplace is or may be dangerous to his or her health or that of other workers at the workplace, or another person at the workplace, the worker shall immediately report it to his or her supervisor.

20. **Report to C-NLOPB**

Where a worker has made a report under para. 19 and the matter has not been remedied to the satisfaction of the worker he or she shall report it, either in writing or orally, to the C-NLOPB or an officer.

21. **Duty of Worker**

A worker shall not take advantage of his or her right to refuse to work under para. 18 without reasonable grounds.

22. **Discriminatory Action Prohibited**

An employer or union shall not take a discriminatory action against a worker by dismissing him or her or by deducting wages, salary or other benefits, or by taking other disciplinary action against him or her

- (1) because of the worker's participation in or association with the committee or worker health and safety representative at the workplace, or because the worker is a worker health and safety representative;
- (2) because the worker has testified or is about to testify in a proceeding or inquiry under the Act or Regulations;
- (3) because the worker has given information to the Workplace Health, Safety and Compensation Commission, an officer or another person concerned with the administration of the Act or the Regulations concerning the health, safety and welfare of workers at his or her workplace; or
- (4) because the worker has reasonably refused to work under his or her right to do so under para. 18.

23. **Discrimination**

Where disciplinary action is taken against a worker or he or she is dismissed following an act by him or her under para. 22, the disciplinary action or dismissal shall be considered to be, in the absence of evidence to the contrary, discriminatory.

24. **Allegation of Discrimination**

- (1) Where a worker alleges that his or her employer has taken discriminatory action against the worker for a reason set out in para. 22, the worker may,
 - (a) where a collective agreement is in force between a union, of which a worker who alleges discrimination is a member, and the employer, and the collective agreement provides for the use of a grievance procedure where discrimination is alleged, follow that grievance procedure; or
 - (b) apply to the board for a determination as to whether the action was discriminatory.
- (2) Where a worker alleges that his or her union has taken discriminatory action against the worker for a reason set out in para. 22, the worker may apply to the board for a determination as to whether the action was discriminatory.

25. **Remedies**

- (1) Where the board makes a finding that an action was discriminatory it
 - (a) shall order the employer to reinstate the worker under the same terms and conditions under which the worker was formerly employed;
 - (b) shall order the employer to pay or make up to the worker his or her lost wages, salary and other benefits;
 - (c) shall order that a reference to the dismissal or disciplinary action on the employer's records be deleted; and
 - (d) shall order the reinstatement of the worker to his or her trade union where the worker has been expelled by the union.
- (2) Where an order is made under section 33 of the Act and is filed with the Registrar of the Supreme Court that order is enforceable as if it were a judgement or order of the Supreme Court.

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