

Workplace Health and Safety Bulletin



Occupational Health and Safety Act Amended in 2002 – Highlights

Bill 37, the *Occupational Health and Safety Act Amendment Act*, received Royal Assent on December 4, 2002. Effective on that date, Alberta's *Occupational Health and Safety Act* changed in six major ways:

- (1) *Maximum fines increased* – the maximum fine for a violation of the *Occupational Health and Safety Act* increased from \$150,000 to \$500,000.
- (2) *The Court can now order alternative penalties* – penalties other than fines and jail sentences for occupational health and safety (OHS) offences, such as having to provide safety programs or educational programs, can now be awarded by judges.
- (3) *The use of an Occupational Health and Safety Code is now permitted* – the process for updating OHS rules was streamlined by allowing the creation of an OHS Code that contains workplace safety rules.
- (4) *On-the-spot administrative fines are now possible* – the Act was amended to allow occupational health and safety officers to issue on-the-spot administrative fines similar to those used for traffic violations. These fines will only be introduced if a study of this approach in other jurisdictions shows them to be effective.

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- (5) *The names of the best and worst safety performers can now be made public* – the Act was amended to allow the names of employers with the best and worst safety performance records to be published.
- (6) *The prosecution period was extended* – the length of time available to prosecutors to begin a prosecution was increased from one year to two years.

The following is a brief summary of each of the amendments made.

(1) Increased maximum fines

What changed?

- The maximum fine for a first offence under the *Occupational Health and Safety Act* increased from \$150,000 to \$500,000.
- The maximum fine for a second and subsequent offence increased from \$300,000 to \$1,000,000.
- Other fines increased proportionally.

Why was the change necessary?

- Maximum fines had not changed since 1988. Fines were increased to reflect the seriousness of OHS offences, particularly worker deaths.
- Alberta's fines are now similar to those of British Columbia, Ontario, the Northwest Territories, and the federal government.
- To be an effective deterrent, maximum fines must be high enough to be of concern to violators.
- Alberta Human Resources and Employment's (AHRE) *Workplace Safety 2.0* strategy recommended that all maximum fines be increased.

Fines were increased to reflect the seriousness of OHS offences.

How will the change affect employers and workers?

- Judges have a wider range of fines available for sentencing.
- Prosecutors will push for higher fines to reflect the seriousness of OHS offenses.

How will the change improve workplace health and safety?

- Increased fines should act as a more powerful deterrent to employers and workers intent on ignoring the law.

(2) Alternative penalties ordered by the Court

What changed?

- The Court is now able to assess penalties other than fines and jail sentences for violations of the *Occupational Health and Safety Act*.

Why was the change necessary?

- Fines and jail sentences may not always be the most effective penalties. The Court should have more flexibility when penalizing violators.
- Alternative penalties could be any action that the Court considers appropriate, taking into account the nature and circumstances of the offence.
- Examples of alternative penalties include having to establish an effective health and safety program, setting up specific safety training for workers, running a safety workshop for an industry sector, and performing community service.

Fines and jail sentences may not always be the most effective penalties.

How will the change improve workplace health and safety?

- Judges can order creative penalties that address the needs of specific situations.

(3) Recognition of an Occupational Health and Safety Code

What changed?

- The Minister of Human Resources and Employment was given the authority to adopt an Occupational Health and Safety (OHS) Code to replace the OHS regulations currently in effect. The Occupational Health and Safety Council will make the Code.
- Affected stakeholders will continue to be consulted before any changes are made to the OHS Code.
- The adopted OHS Code will be as enforceable as existing regulations.

Why was the change necessary?

- There are presently 11 OHS regulations containing hundreds of rules and many detailed technical requirements. Keeping all these regulations up-to-date with the latest in safety practices is difficult.
- Transferring the detailed safety rules from regulations to an OHS Code streamlines the process of revising and keeping the rules as current as possible.

How will the change affect employers and workers?

- The OHS Council will oversee the making of the OHS Code. The Code will be approved into law by the Minister rather than by the Lieutenant Governor in Council.
- Industry and labour should not be affected by the change. The amendment of the *Act* ensures that proper consultation with stakeholders continues to take place. The amendment also ensures that the adopted Code is enforceable.

How will the change improve workplace health and safety?

- Keeping workplace health and safety rules current with up-to-date technology and knowledge is essential. The rules ensure that the most current and best practices are followed.

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(4) On-the-spot administrative fines

What changed?

- Alberta Human Resources and Employment was given the authority to create a system of on-the-spot administrative fines. If created, the system will allow occupational health and safety officers to issue on-the-spot fines for contraventions of the *OHS Act*, regulations, and any adopted code.
- A system of fines will only be introduced if a study of this approach in other jurisdictions shows it to be an effective way of reducing workplace injuries.

Why was the change necessary?

- On average, six to seven OHS prosecutions take place in Alberta each year. The resources available at Alberta Justice often limit this number. On-the-spot fines may complement the Court system, serving as a deterrent to those employers and workers intent on ignoring the law.
- British Columbia, Ontario, Manitoba and Nova Scotia already have the authority to use administrative fines for OHS offences.
- Examples of situations in which these jurisdictions use administrative fines include cases where there is a failure to protect workers from falling from height, and where workers are not adequately protected while working in a trench.
- Alberta Human Resources and Employment's *Workplace Safety 2.0* strategy recommended that the authority to introduce a system of on-the-spot fines be included in the *Act*.

How will the change affect employers and workers?

- A system of fines will only be introduced if a study of this approach in other jurisdictions shows it to be an effective way of reducing workplace injuries.
- If a system of fines is created, an employer or worker within a targeted industry sector may be fined on the spot without having to be prosecuted through the Courts. The fine need not be particularly large to act as an effective deterrent.

A system of fines will only be introduced if a study of this approach in other jurisdictions shows it to be an effective way of reducing workplace injuries.

How will the change improve workplace health and safety?

- Effective enforcement and an awareness of the rules are essential to a successful compliance program. Certain industry sectors have high injury rates and a track record of poor compliance with occupational health and safety rules. An on-the-spot fines system focusing on these sectors might improve compliance and reduce workplace injuries.
- An on-the-spot system of fines may convince employers and workers to comply with safety rules.

(5) Best and worst safety performers

What changed?

- Alberta Human Resources and Employment now has the authority to make public the safety performance records of Alberta employers. These performance records can be posted on the Workplace Health and Safety Web site, be listed in the Occupational Health and Safety Magazine, or in other publications prepared by the Ministry.
- Performance records are to be based on workplace injury statistics collected by the Workers' Compensation Board (WCB) – Alberta.

Why was the change necessary?

- Publicizing the safety records of employers should put pressure on employers to reduce workplace injuries.
- Workers and the public have a right to know the safety record of the province's best and worst performing employers.
- Alberta Human Resources and Employment's *Workplace Safety 2.0* strategy recommended that this information be made publicly available.

How will the change affect employers and workers?

- The public image and reputation of employers may be affected by the publication of this information.
- Employers may change their workplace safety practices in order to protect or enhance their public image and reputation. Both the employer and the employer's workers stand to benefit from improved safety practices.

Publicizing the safety records of employers should put pressure on employers to reduce workplace injuries.

How will the change improve workplace health and safety?

- Many employers work hard to avoid bad publicity. It is expected that employers will place more emphasis on reducing workplace injuries under their control.

(6) Extended prosecution period

What changed?

- Prosecutors now have up to two years in which to gather information and begin a prosecution. The previous time period was one year.

Why was the change necessary?

- The change provides additional time in which evidence can be gathered and a solid case developed.
- The additional time reduces the likelihood that a prosecution will not be undertaken because prosecutors ran out of time to develop a solid case.

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How will the change affect employers and workers?


- This change does not affect employers and workers unless they are being, or will be, prosecuted.

How will the change improve workplace health and safety?

- The extended time period should increase the likelihood of successful prosecutions. The change may increase the number of cases taken before the Court.

For more information


 <http://industry.alberta.ca/whs-ohs>
Occupational Health and Safety Act

 http://employment.alberta.ca/documents/WHS/WHS-PUB_ohsmag_0103.pdf
Workplace Safety 2.0

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Workplace Health and Safety



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