Human Resources and Social Development Canada
Ressources humaines et Développement social Canada

Fair, Safe and Productive Workplaces

Labour

Occupational Health and Safety and Compliance

LT-081-09-07

Canada

Occupational Health and Safety and Compliance

This regulatory program is based on Part II of the *Canada Labour Code (Code)*. The purpose of Part II is "to prevent accidents and injury to health arising out of, linked with, or occurring in the course of employment to which this Part applies." It applies to federally regulated industries and the federal public service.

In addition to Human Resources and Social Development Canada (HRSDC) officers, Transport Canada and the National Energy Board of Canada have officers appointed by the Minister of Labour to act as **health and safety officers** under Part II of the *Code*.

To facilitate the shared internal responsibility of the work place parties (employers and employees), Part II of the *Code* requires the establishment of a work place health and safety committee in a work place of 20 or more employees. However, a health and safety representative must be appointed where there are up to 19 employees or where other specified conditions exist in a work place. The *Code* also requires a policy health and safety committee for employers with 300 or more employees, in addition to the work place health and safety committee.

Policy health and safety committees, work place health and safety committees, and

health and safety representatives have a number of common powers, whereby employers and employees are encouraged to work together to identify and resolve job-related health and safety concerns.

Occupational Health and Safety's Response to Non-Compliance

Assurance of Voluntary Compliance (AVC) – An AVC is the employer's or employee's written commitment to a health and safety officer that a contravention of the *Canada Labour Code* will be corrected within a specified period.

An AVC may be used to correct minor infractions ***but never in situations that constitute a danger***. Where there is agreement and willingness to do so, the health and safety officer may accept the commitment of the person in charge of the work place, or the employee, that the situation will be corrected.

Failure to complete the corrective actions specified in an AVC will lead to the issuance of a direction. Continued non-compliance may lead to certain sanctions up to and including prosecution.

Employers and employees are required to inform health and safety officers that they have taken the corrective action agreed to in

an AVC. In addition, health and safety officers may carry out spot checks to verify compliance.

Direction – A direction is a written order directing the employer or employee to terminate and correct a contravention of the *Code* within a specified period.

Directions are to be issued whenever an AVC is not obtainable or has not been fulfilled or where a dangerous condition exists.

When an oral direction is issued, it shall be confirmed in writing. Directions will specify the time allotted to implement corrective action. Health and safety officers across Canada use a standard format for directions.

When a direction has obvious multiregional and/or interdepartmental implications, the appropriate headquarters group is consulted in advance, whenever possible, or promptly notified of its issuance. This information will be disseminated through appropriate channels.

Appeal of Directions – Part II of the *Code* provides a mechanism for appealing directions. Under this provision, any employer, employee or trade union that considers itself to have been aggrieved by a direction given by a health and safety officer, may request an appeal by an appeals officer. This request must be made ***within 30 calendar days*** of the date of the direction being issued.

Appeal of Decisions – Part II of the *Code* provides a mechanism for appealing a health and safety officer's decision of "no danger" in refusal to work situations. Under this provision, an employee or his designate may appeal the officer's decision in writing to an appeals officer. This request must be made ***within 10 calendar days*** of the date of the decision being received.

Appeals Officer – It is the responsibility of the appeals officer to review directions and decisions in accordance with the *Code*. The Office of the Appeals Officer has been established to provide an objective, "arm's-length" approach. A request for a review of a direction **does not operate as a stay of the direction**, unless otherwise ordered by the appeals officer.

Court Actions – Where a health and safety officer has determined through an investigation that a contravention has been committed, a prosecution may be undertaken.

It is departmental policy to initiate a prosecution when there are serious contraventions or where corrective action has not been taken.

Penalties – The law provides for offences of graduated seriousness.

Criminal offences include those in the *Criminal Code*, such as criminal negligence causing death or bodily harm. To complement

these, Part II of the *Canada Labour Code* defines as a criminal offence the wilful breach of health and safety standards when the person in breach knows that serious injury or death is likely. This offence, unlike those in the *Criminal Code*, does not require that someone actually be hurt. Such offences can lead to imprisonment.

Maximum financial penalties for offences under Part II of the *Code* range from $100,000 to $1,000,000.

Limitation Period – Proceedings in respect to an offence under Part II of the *Code* may be instituted at any time ***within one year*** of the incident or situation upon which the proceedings are based.

Minister's Consent – The *Code* provides that prosecutions may take place only with the consent of the Minister of Labour. This is done to ensure consistency in prosecution practices, which is in keeping with the *Canadian Charter of Rights and Freedoms*, thus increasing respect for the program and promoting compliance with the law.

The Labour Program's compliance policy also pertains to other program areas such as labour standards, work place equity, and the fire protection services. For additional information, refer to the publication entitled "Compliance Policy".

Internet address to current
Labour Program information:
http://labour.gc.ca

General occupational health and safety information can be found on the Internet Website of the Canadian Centre for Occupational Health and Safety at:
http://www.ccohs.ca

Notes