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The ABCs
of the
**CANADA
LABOUR
CODE,**
Part II

Canada 

The ABCs of the *Canada Labour Code*, Part II

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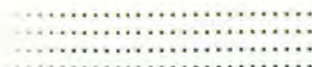
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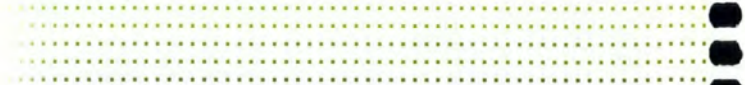
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INDUSTRY CANADA'S HEALTH AND SAFETY POLICY STATEMENT

OBJECTIVE

To promote the establishment and the maintenance of a safe and healthy work environment for all employees in order to reduce or prevent the incidence of occupational injuries or illnesses.

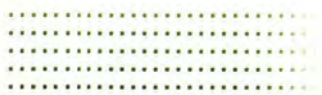
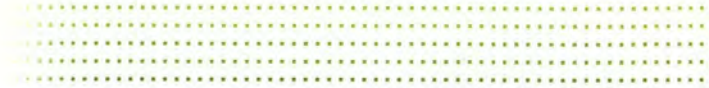
DUTIES AND RESPONSIBILITIES OF INDUSTRY CANADA AS AN EMPLOYER

*As the employer, Industry Canada shall exercise leadership at all levels of the organization in order to ensure full compliance with the requirements of Treasury Board Policy as well as Part II of the **Canada Labour Code** and **Canada Occupational Health and Safety Regulations** and any standards and guidelines as may be developed by Industry Canada. Voluntary compliance, self-regulations and joint resolutions of problems shall be encouraged by managers.*

RESPONSIBILITIES OF INDUSTRY CANADA'S EMPLOYEES

Industry Canada's employees have a responsibility to become familiar with and comply with the provisions of Section 126 of the **Canada Labour Code** Part II. Employees have an obligation to identify and to bring to the immediate attention of management, any potential or actual hazardous situations which are likely to cause injury or illness to the employee or another person.*

** Section 126: Duties/Responsibilities of employees (section 2.2 of this booklet).*



INTRODUCTION

1.1 WHAT IS THE CANADA LABOUR CODE?

The *Canada Labour Code* is legislation that combines all labour-related statutes of Canadian law. It applies to all areas under federal jurisdiction and addresses issues such as industrial relations, workplace health and safety, and regulations regarding standard work hours, wages and vacations.

Part II of the Code, Occupational Health and Safety, requires that employers identify and correct problems that affect health and safety in the workplace. It holds the employer responsible for all employees and contractors working for the employer wherever they may be working (including travel), and for visitors and clients who visit the employer's workplace. It also identifies the duties and rights of employees.

1.2 WHAT IS DUE DILIGENCE?

Due diligence is the level of judgment, care, prudence, determination and activity that would be reasonably expected of a person under particular circumstances. When applied to occupational health and safety, due diligence means that employers must be able to take all reasonable precautions under the particular circumstances to prevent injuries or accidents in the workplace.

Due diligence is important as a legal defence for a person charged under occupational health and safety legislation.* A defendant may be found "not guilty" if s/he can prove that due diligence was exercised. In other words, the defendant must be able to prove that all reasonable precautions were taken to protect the health and safety of workers and visitors under the circumstances.

* The federal *occupational health and safety legislation* is commonly referred to as *Canada Labour Code, Part II* and its Regulations. The federal government has responsibility for the health and safety of its own employees and those of federal corporations.

1.3 EXPECTATIONS OF INDUSTRY CANADA MANAGEMENT AND EMPLOYEES

Senior Managers

Senior Managers are expected to:

- be aware of their responsibilities and have written policies and directions in place;
- ensure that system-wide programs are in place; and
- act immediately when concerns are brought to their attention.

Middle Managers

Middle Managers are expected to:

- be aware of their responsibilities and issues and give more specific directions to employees when necessary;
- be an integral part of the system by reporting upwards and managing downwards;
- be responsible not only for giving instructions, but also for seeing that those instructions are carried out;
- ensure that the appropriate prevention programs are in place;
- ensure that supervisors and employees are trained and that it is confirmed and recorded; and

- ensure that incidents are investigated and reported, corrective action is implemented, and follow-up is completed.

Managers and Supervisors

Managers and Supervisors are expected to:

- ensure that the occupational health and safety program is effectively implemented within their organizations;
- provide the appropriate training or instructions to staff in accident prevention, hazard recognition, occupational health promotion and first aid and/or cardiopulmonary resuscitation (CPR);
- ensure that all accidents in their areas of responsibility are properly investigated and reported without delay and that corrective and/or disciplinary action is taken as necessary; and
- ensure that personal protective equipment and devices are provided, used and maintained in good condition.

Employees

Employees are expected to:

- read all information on health and safety received from management, and to understand and follow safe work practices;
- take all reasonable and necessary precautions to protect the health and safety of themselves or others including the use of specific protective devices and safety equipment (such as safety glasses), that are required for the job;
- promptly inform their immediate supervisor of all unsafe working conditions which are beyond the control of the employee to correct;

- seek the appropriate first aid or medical attention for a work-related injury or illness, and promptly report any such incidents to their immediate supervisor; and
- participate in occupational health and safety training when required.

Section 2

RESPONSIBILITIES OF EMPLOYERS AND EMPLOYEES

2.1 RESPONSIBILITIES OF EMPLOYERS

Every employer will ensure that the health and safety of every person employed at the workplace is protected. This includes every workplace operated by the employer. It also includes situations where the employer controls the work activity of an employee at a location that is not operated by the employer.

It is the responsibility of the employer to:

- make the terms of Part II of the *Canada Labour Code* easily accessible to all employees, as well as any employer policies related to health and safety, or any regulations related to the workplace that have been made as a result of Part II of the *Canada Labour Code*;
- ensure that those employees with supervisory or managerial responsibilities are sufficiently trained and are informed of their health and safety responsibilities when acting on behalf of their employer as outlined in Part II of the *Canada Labour Code*;
- provide each employee with the information, training and supervision necessary to ensure their health and safety at work;
- ensure that each employee is aware of every known or potential health or safety hazard in the area where the employee works;
- keep and maintain appropriate health and safety records;

- investigate, record and report all known accidents, occupational diseases and other hazardous occurrences to the proper authorities as required;
- ensure that the procedures relating to the workplace and to work spaces meet applicable ergonomic standards;
- ensure that machinery, equipment and tools used by the employees meet the necessary health, safety and ergonomic standards and are safe to operate under all conditions of their intended use;
- comply with every verbal or written instruction given to the employer by an Appeals Officer or a Health and Safety Officer concerning the health and safety of employees;
- provide necessary first aid facilities, health services, potable water, sanitary and personal facilities;
- adopt and implement safety codes and standards;
- ensure that the activities of every person who is given access to the workplace will not endanger the health and safety of the employees;
- ensure that all vehicles and mobile equipment used by employees meet the required standards; and
- provide safety materials, equipment, devices and clothing, as well as information for their proper use, to all individuals who have access to the workplace.

Whether the employer is the owner or the tenant of the workplace, it is the employer's responsibility to ascertain, either directly or through the building owner, that:

- employees have a safe entry, exit and occupancy of the workplace;
- all permanent and temporary buildings and structures meet applicable standards;
- all standards applicable to the installation and to the maintenance of guards, guardrails, barricades and fences are met;
- all appropriate standards for the use, operation and maintenance of boilers and pressure vessels, escalators, elevators and other devices for moving passengers or freight are satisfied;
- all equipment used to generate, distribute or use electricity, gas, oil-burning or other heat-generating equipment, and heating, ventilation and air-conditioning systems are satisfied;
- all ventilation, lighting, temperature, humidity, sound and vibration levels are within prescribed standards; and
- all standards related to fire safety and emergency measures are satisfied.

With respect to a workplace where hazardous substances are present, the employer is responsible to ensure that:

- the concentrations of the hazardous substance are controlled in order to meet appropriate standards;
- all hazardous substances are stored, handled and identified appropriately;
- each controlled product or container in which a hazardous substance is stored is clearly labeled with all necessary

information and applicable hazard symbols as required under the *Hazardous Materials Information Review Act*;

- a material safety data sheet is available to every employee and includes all the required information on each controlled substance that an employee may be exposed to in accordance with the requirements of the *Hazardous Materials Information Review Act*;
- with the assistance of the Workplace Health and Safety Committee or the Health and Safety Representative, an investigation and assessment of the exposure of employees to hazardous substances is made;
- all records of exposure to hazardous substances are maintained appropriately and that personal records of exposure are made available to the affected employees; and
- any information in the employer's possession is provided to any physician or other medical professional who requests that information to make a medical diagnosis or provide medical treatment for an employee in an emergency. This information will be kept confidential, as specified by the employer, except for the purpose for which it was provided.

More information about the *Hazardous Materials Information Review Act* can be found at: <http://laws.justice.gc.ca>.

2.2 RESPONSIBILITIES OF EMPLOYEES

While in the workplace, every employee has the following responsibilities:

- to use any safety materials, equipment, devices and clothing that are provided by the employer, or necessary and intended for the employee's safety;

- to follow the appropriate procedures to protect the health and safety of other employees;
- to take all reasonable and necessary precautions to ensure his/her personal health and safety and that of other employees and any other person that would be affected by the employee's acts or oversights;
- to comply with all instructions from the employer regarding the health and safety of employees;
- to cooperate with any person carrying out a duty according to Part II of the *Canada Labour Code*;
- to cooperate with the Policy and with the Workplace Health and Safety Committees or with the Health and Safety Representative;
- to report to the employer any object or circumstance in the workplace that is likely to be hazardous to the health and safety of the employee or other employees or individuals who have been given access to the workplace by the employer;
- to appropriately report every accident or any incident during the course of the employee's work that has caused an injury to the employee or to any other person;
- to obey every written or verbal instruction related to the health and safety of employees that is given by a Health and Safety Officer or by an Appeals Officer; and
- to report to the employer any situation that the employee believes to be a contravention of the *Canada Labour Code* by the employer, another employee or any other person.

None of the responsibilities of the employee relieves an employer from any of the employer's responsibilities as outlined in Part II of the *Canada Labour Code*. As well, no employee is personally liable for anything s/he does, or does not do in good faith, when the employee is assisting the employer, as requested by the employer, to provide first aid or any other emergency measures.

2.3 HEALTH AND SAFETY OFFICER

In the context of the *Canada Labour Code*, a Health and Safety Officer is a person appointed by the Minister of Labour.

As part of his/her duties, the Health and Safety Officer may:

- enter any workplace at any reasonable time;
- conduct or have conducted tests, examinations, inquiries, investigations or inspections;
- take or remove samples of any material or substance for analysis;
- be accompanied or assisted by any person and bring any equipment the Officer deems necessary to carry out the Officer's duties;
- take or remove material or equipment for testing if there is no reasonable alternative in so doing;
- take photographs and make sketches of the workplace; and
- meet with any person in private or in the presence of legal counsel or union representation as requested.

The Health and Safety Officer also has the following authority:

- to direct the employer to ensure a specified area or object is not disturbed pending investigation by the Officer;

- to forbid any person from disturbing a specified area or object pending the investigation by the Officer;
- to direct the employer to produce documents and information relating to the health and safety of the employees or the workplace and to allow the Officer to make copies of those documents;
- to direct the employer or an employee to make or provide statements respecting working conditions, material and equipment affecting the health and safety of employees in the workplace; and
- to direct the employer or an employee to accompany the Officer while s/he is in the workplace.

A Health and Safety Officer may issue directions whether the Officer is in the workplace or not. As a final recourse, a Health and Safety Officer has the authority to recommend prosecution for non-compliance with his/her direction.

2.4 MANAGER, OCCUPATIONAL HEALTH AND WORKPLACE SAFETY

The Occupational Health and Workplace Safety Manager for Industry Canada is responsible for:

- initiating programs within the Department in support of occupational health and workplace safety activities;
- co-ordinating training programs in support of management and staff;
- co-ordinating the Workplace Compensation Program and related cost-recovery activities;

- evaluating the success of programs and the compliance of Industry Canada to the requirements of the *Canada Labour Code*; and
- reporting as required to Human Resources Development Canada (Labour Canada) and central agencies on behalf of the Department.

2.5 EMPLOYEES' RIGHTS

The Right to Refuse to Work

An employee has the right to refuse to work if s/he has reasonable cause to believe:

- a situation exists in the workplace that presents a danger* to his/her health or safety; or
- the use of equipment or machinery or the performance of an activity presents a danger to his/her safety or to that of a co-worker.

For an employee to be protected by the provisions of Part II of the *Canada Labour Code* regarding the right of refusal to work, the employee must follow the procedures outlined in the *Canada Labour Code*.

* Danger means any existing or potential hazard or condition, or any current or future activity, that could reasonably be expected to cause injury or illness to a person exposed to it before the hazard or condition can be corrected or the activity altered, whether the injury or illness occurs immediately after the exposure to the hazard, condition or activity, or not. This includes any exposure to a hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system.

The Right to Participate

Employers who employ 300 or more employees are required to establish a Policy Health and Safety Committee. The purpose of the Committee is to address issues that are common in nature to the organization as a whole. As Health and Safety Representatives or Committee members, employees have the right and the responsibility to participate in identifying and correcting job-related health and safety concerns. Part II of the *Canada Labour Code* also requires that employees participate through the use of an internal complaint resolution process.

The Right to Know

Employees have the right to know of identified or foreseeable hazards in the workplace. They also have the right to have the information, training and supervision necessary to ensure protection of their health and safety.

This right requires an appropriate method of communication for all employees including those with special needs such as Braille, large print, audio tape, computer disk, sign language or verbal communication.

Through the Health and Safety Committees or Representatives, employees have the right to access government or employer reports related to the health and safety of employees. This does not include access to medical records of any individual without the consent of the individual.

2.6 INTERNAL COMPLAINT RESOLUTION PROCESS

The investigation of a complaint requires an internal complaint resolution process. This means that employers and employees must make every effort to settle complaints internally before the involvement of a Health and Safety Officer is required.

This is a new and mandatory approach to ensure that an employee's health and safety concerns are addressed by the employer without the employee having to initiate a "refusal to work". Failure to follow the process is a contravention and could result in compliance action.

Making a Complaint

An employee who reasonably believes that there has been a violation of Part II of the *Canada Labour Code*, or that there is a threat of an accident or health injury within the workplace, must make a complaint to his/her supervisor before taking any action available under the *Canada Labour Code*.

Investigation of a Complaint

The employee and employer must try to resolve the complaint between themselves as soon as possible. The employee or the employer may request that an unresolved complaint be investigated by the Workplace Health and Safety Committee or by the Health and Safety Representative. This investigation will be conducted by either an employee and an employee member of the Workplace Health and Safety Committee, or by the Health and Safety Representative and a person selected by the employer.

The individuals who investigate the complaint will inform the employee and the employer of the results of the investigation in writing, as requested. Recommendations can be made to the employer about the situation that caused the complaint, regardless of whether the conclusion of the investigation is that the complaint is justified or not.

Where the investigation concludes that the complaint is justified, then once the employer has been informed of the results of the investigation, s/he must promptly notify the individuals investigating the complaint in writing of the means and the date

by which the employer intends to resolve the issue. The employer must then resolve the matter as s/he has indicated.

If the investigation concludes that a danger exists to an employee, directly or indirectly, through the operation or use of machinery, or the performance of a job duty or work in the workplace, then upon receipt of written notice, the employer will ensure that no employee will continue to work under the dangerous conditions until the situation has been resolved.

Internal Complaint Referral to a Health and Safety Officer

The employee or employer may refer a violation of Part II of the *Canada Labour Code* to a Health and Safety Officer under the following circumstances:

- where the employer does not agree with the results of the investigation;
- where the employer has failed to inform the individuals who investigated the complaint of the method and timing for the resolution of the matter or has failed to take action to resolve the matter; or
- where the individuals who investigated the complaint do not agree amongst themselves about whether the complaint is justified.

The Health and Safety Officer will investigate the complaint and once the investigation is complete, s/he may:

- recommend that the employee and employer resolve the matter between themselves if in the Officer's opinion it is appropriate; or
- give instructions to an employer or employee, depending on whether a danger exists to an employee or another person

within the workplace, to either stop the violation within the time frame the Officer dictates or to take the steps necessary to ensure that the violation does not reoccur.

Where a Collective Agreement Exists

Based on the joint application of the parties to a collective agreement, the Minister of Labour may exclude employees from complying with the internal complaint resolution process and the investigation of a Health and Safety Officer as outlined in Part II of the *Canada Labour Code*. This option exists only where the Minister of Labour is satisfied that the Agreement is as effective as those sections of Part II of the *Canada Labour Code* in protecting the employees from danger to their health and safety.

2.7 REFUSAL OF DANGEROUS WORK

An employee does have the right to refuse to operate or use machinery, to perform a job duty, or to work in a workplace if the employee has reasonable cause to believe that:

- the use or operation of a machine or object will pose a danger to the employee or to another employee;
- the performance of a job activity will pose a danger to the employee or to another employee; or
- a condition exists in the workplace that will pose a danger to the employee or to another employee.

This also applies to pregnant or nursing employees who feel that the health and safety of their fetus or child is at risk as a result of their performance of their job duties or from the workplace environment.

An employee may not refuse to use or to operate a machine or object, to perform a job duty, or to work in a workplace if:

- refusal to work will endanger the life, health or safety of another person directly; or
- the danger is a normal condition of employment.

If the employer agrees that a danger exists, the employer will take immediate action to protect employees from such danger. The employer will also inform the Workplace Health and Safety Committee or the Health and Safety Representative of the situation and the employer's actions to resolve it.

Internal Investigation of a Continued Refusal to Work

Where the employer does not immediately resolve the situation, the employee may continue to refuse to work and will promptly report the matter to the employer and to the Workplace Health and Safety Committee, or to the Health and Safety Representative. Once informed of an employee's continued refusal to work, the employer will immediately investigate the matter in the presence of the employee who reported it along with:

- at least one member of the Workplace Health and Safety Committee who does not have management functions;
- the Health and Safety Representative; or
- at least one person from the workplace who is selected by the employee, if a member of the Workplace Health and Safety Committee or the Health and Safety Representative is unavailable.

Where more than one employee has made a similar report of continued refusal to work, those employees may designate one employee from amongst themselves to be present at the investigation.

An employer may proceed with an investigation without the employee who reported the issue if that employee, or a person they designate, chooses not to be present for the investigation. If an employer disputes a matter reported from the investigation, or takes the steps to protect employees from the danger, and the employee still has reasonable cause to believe that the danger continues to exist, the employee may continue to refuse to operate the machine or object, to perform a job duty, or to work in the workplace. If this occurs, the employer, once notified of the continued refusal, will notify a Health and Safety Officer. The employer will also inform the Workplace Health and Safety Committee or the Health and Safety Representative of any steps taken by the employer to protect the employees from the danger.

Employees on Shift during a Work Stoppage

An employer can assign reasonable alternative work to employees who are affected by a work stoppage.

Unless otherwise stated in a collective agreement or other agreement, for the purpose of calculating wages and benefits, employees who are affected by a work stoppage as a result of an employee's refusal to work in a dangerous situation are considered to be at work during the stoppage until the work starts again, or until the end of the scheduled work period or shift, whichever length of time is shorter.

For purposes of calculating wages and benefits, employees who are due to work on a scheduled work period after a shift during which there has been a work stoppage are considered to be at work during their scheduled work period or shift. This is unless otherwise stated in a collective agreement or other agreement, or unless the employees have been given one-hour notice not to attend work.

However, employees who are paid wages or benefits as a result of a work stoppage may be required by the employer to repay those wages and benefits. This can occur if the employee who used his/her right to refuse to work in a dangerous situation did so knowing that no circumstances existed that would justify their continued refusal. This is unless otherwise stated in a collective agreement or other agreement.

Investigation by a Health and Safety Officer of a Continued Refusal to Work

Once a Health and Safety Officer is notified that an employee continues to refuse to use or operate a machine or object, to perform a job duty or to work in a workplace, s/he will promptly investigate the issue. A replacement Health and Safety Officer may also conduct the investigation and it must be completed with the employer, the employee concerned, and one other person from the following list:

- an employee member of the Workplace Health and Safety Committee;
- the Health and Safety Representative; or
- an employee from the workplace, chosen by the employee, if the Health and Safety Representative or an employee member of the Workplace Health and Safety Committee is unavailable.

If the investigation involves complaints from more than one employee, those employees may designate one employee from amongst themselves to be present at the investigation.

The Health and Safety Officer can conduct the investigation without the presence of the employer, employee, Health and Safety Representative or employee member of the Workplace

Health and Safety Committee if any of these people choose to not be present for the investigation.

Before the investigation and decision of a Health and Safety Officer, the employee concerned may be required by the employer to stay at a safe location near the place of the investigation. The employer may also assign the employee to reasonable, alternative work but will not assign any other employee to use or to operate the machine or object, to perform the job duty, or to work in the workplace in question unless:

- the other employee is qualified to do the work;
- the other employee knows of the refusal to work of the employee concerned and the reasons for the refusal; and
- the concerned employee is satisfied, with reason, that the other employee will not be in danger.

Once the investigation is complete, the Health and Safety Officer will decide whether a danger exists and will immediately give written notification of the decision to the employer and employee.

If the Health and Safety Officer decides that a danger exists, the Officer will instruct the employer in writing to take action to correct the hazard, to alter the activity that poses a danger, or to protect any person from the danger immediately or within a specified time frame. If the danger cannot be corrected or eliminated, the Officer can advise the employer in writing to immediately stop the use of the dangerous machine, object or activity until s/he complies with the directions. An employee may continue to refuse to use or to operate a machine or object, to perform a job duty, or to work in a workplace until the Health and Safety Officer's directions are satisfied, changed or withdrawn.

If the Health and Safety Officer decides that the danger does not exist, the employee is no longer entitled to continue to refuse to work. However, the employee, or a person chosen by the employee, may appeal the decision by writing to an Appeals Officer within ten days after receiving notice of the decision.

Compliance or failure to comply with any of the requirements of Part II of the *Canada Labour Code* by an employer or employee will not affect the rights of the employee to be compensated under any legislation related to compensation for employment injury or illness. It will also not affect any liability or obligation of an employer or employee under the same legislation.

2.8 PREGNANT AND NURSING EMPLOYEES

An employee who is pregnant or nursing may stop performing her job if she believes that as a result of her pregnancy or her nursing a child, her current job functions may pose a risk to her health or to the health of her fetus or child. Once informed of the discontinuation of her job functions and with the employee's consent, the employer will notify the Workplace Health and Safety Committee or the Health and Safety Representative.

The employee must consult with a qualified medical professional of her choice as soon as possible to establish whether the continuation of any of her current job functions will pose a risk to her health or the health of her fetus or child.

Taking into account any other agreements, terms or conditions of employment applicable, once the medical professional has established that there is no risk to the health of the employee, fetus or child, the employee may no longer refuse to perform her job.

During the time the employee does not perform her job and in consultation with the employee, the employer may reassign her to

another job that would not pose a risk to her health or the health of her fetus or child. Regardless of whether the employee is reassigned to another job, she will keep the original job position and she will continue to receive the wages and benefits that are associated with her original position during the time she does not perform her original job.

The legislation regarding pregnant and nursing employees was amended in September 2000.

Section 3

POLICY AND WORKPLACE HEALTH AND SAFETY COMMITTEES

3.1 *POLICY HEALTH AND SAFETY COMMITTEES*

Several important amendments were made to Part II of the *Canada Labour Code* in September 2000. This included changes to the roles and responsibilities of the Workplace Health and Safety Committees and to the creation of a Policy Health and Safety Committee.

The roles of the Workplace Health and Safety Committees and of the Health and Safety Representatives have been improved. They now have broader powers to deal with health and safety issues in the workplace.

In addition, organizations with 300 or more employees must establish a Policy Health and Safety Committee, with equal representation from managers and employees. These committees now have the power to carry out a range of activities to promote a healthy and safe working environment for all employees.

The roles of the Policy Health and Safety Committee are:

- to participate in the development of health and safety policies and programs;
- to review and promptly address any issues related to health and safety that are brought to the Committee's attention by either a Committee member or a Health and Safety Representative;
- to contribute to the development of a program to prevent hazards in the workplace and to educate employees in health and safety matters;

- to participate in inquiries, investigations, studies and inspections related to occupational health and safety, when necessary;
- to participate in the development and monitoring of a program to supply personal protective equipment, clothing, devices or materials;
- to cooperate with Health and Safety Officers;
- to examine information on work accidents, injuries and health hazards; and
- to participate in the planning and implementation of changes that might affect occupational health and safety, including changes to work processes and procedures.

3.2 WORKPLACE HEALTH AND SAFETY COMMITTEES

Workplace Health and Safety Committees must be established in workplaces where there are 20 or more employees. At least half of the committee members must be employees who do not have managerial functions.

Duties of a Workplace Health and Safety Committee

The Workplace Health and Safety Committee will perform the following duties:

- review and promptly address any complaints related to the health and safety of employees;
- contribute to the development, implementation and monitoring of a program to prevent hazards in the workplace and to educate employees in health and safety matters, where a Policy Health and Safety Committee does not already exist;

- take part in the development and implementation of a program to prevent hazards specific to the workplace and to educate employees in health and safety matters related to those hazards;
- participate in inquiries, investigations, studies and inspections related to the health and safety of employees, including consulting with professional or technical experts when necessary;
- participate in the development, implementation and monitoring of a program to supply personal protective equipment, clothing, devices or materials where a Policy Health and Safety Committee does not already exist;
- cooperate with Health and Safety Officers;
- ensure that records on work accidents, injuries and health hazards related to the health and safety of employees are maintained and monitored;
- participate in the planning and implementation of changes that might affect occupational health and safety, including changes to work processes and procedures where a Policy Health and Safety Committee does already not exist;
- assist the employer with investigating and assessing employees' exposure to hazardous substances; and
- inspect all or parts of the workplace on a monthly basis so that every part of the workplace is inspected at least once each year.

3.3 HEALTH AND SAFETY REPRESENTATIVES

For each workplace which normally has less than 20 employees or where a Workplace Health and Safety Committee is not required,

employers must appoint a Health and Safety Representative for that workplace.

The Health and Safety Representative will be selected through one of two methods:

- the employees at the workplace who do not serve managerial functions will select a person from amongst themselves; or
- where there is a trade union representing the employees, the trade union will select a person, in consultation with any employees who are not represented by the union, and pursuant to any regulations made by the Governor of Council.

The employer will perform the functions of the Health and Safety Representative until a person is selected. Once a selection is made, the employer will be notified in writing of the name of the person selected by the employees or by the trade union.

Where a trade union fails to select a person, a Health and Safety Officer must notify the local branch of the trade union in writing, and the Officer will also send a copy of the notification to the trade union's national or international headquarters, and to the employer.

The Governor in Council may make regulations related to the Health and Safety Representative specifying:

- the qualifications and term of office for a Health and Safety Representative;
- the method of selection for a Health and Safety Representative where employees are not represented by a trade union; and
- the ways in which a Health and Safety Representative can apply his/her powers and perform his/her duties.

Duties of a Health and Safety Representative

The following are the duties and responsibilities of a Health and Safety Representative:

- to consider and quickly resolve complaints related to the health and safety of employees;
- to ensure that adequate records are maintained and information monitored for work accidents, injuries, health hazards and resolved complaints related to the health and safety of employees;
- to meet with the employer to address health and safety matters when necessary;
- to participate in the development, implementation and monitoring of a program to prevent hazards in the workplace and to educate employees in health and safety matters, where a Policy Health and Safety Committee does not already exist;
- to participate in the development, implementation and monitoring of a program to prevent hazards specific to the workplace and to educate employees in health and safety matters related to those hazards;
- to participate in inquiries, investigations, studies and inspections related to the health and safety of employees, including consultations with professional or technical experts;
- to cooperate with Health and Safety Officers;
- to participate in the planning and implementation of changes that might affect occupational health and safety, including changes to work processes and procedures, where a Policy Health and Safety Committee does not already exist;

- to inspect all or parts of the workplace on a monthly basis so that every part of the workplace is inspected at least once each year;
- to participate in the development of health and safety policies and programs;
- to assist the employer in the investigation and assessment of exposure of employees to hazardous substances; and
- to take part in the development, monitoring and implementation of a program to supply personal protective equipment, clothing, devices or materials where a Policy Health and Safety Committee does not already exist.

A Health and Safety Representative is not personally liable for anything s/he does, or omits to do in good faith, based on the authority given under Part II of the *Canada Labour Code*.

Access to Information

A Health and Safety Representative can request any information from an employer that the representative considers necessary to identify existing or potential hazards related to the materials, processes, equipment or activities of the workplace.

A Health and Safety Representative will also be given full or partial access to all government and employer reports, studies and tests that are related to the health and safety of employees in the workplace. This does not include access to medical records unless the individual involved has provided their consent.

Work Hours and Compensation

A Health and Safety Representative is entitled to take the time required to perform any of the representative's duties during their regular working hours. With authorization from the co-chairs of

the Policy Health and Safety Committee or from the employer where a Committee does not exist, a Health and Safety Representative may also be given time for preparation and for travel purposes.

A Health and Safety Representative will be paid by the employer for performing his/her duties at the regular rate of pay during regular working hours or at a premium rate of pay for time outside of regular working hours. This is to be done in agreement with the applicable collective agreement, or the employer's policy if a collective agreement does not exist.

3.4 CHECKLIST FOR MANAGEMENT

- ✓ Are Committee members aware of their responsibilities and those of the Committee?
- ✓ Are Committee members aware of the operations of the department or agency?
- ✓ Are Committee members aware of the health and safety issues within the department or agency?
- ✓ Do Committee members have the level and authority to make decisions?
- ✓ Is the membership of the Committee representative of the organization?
- ✓ Is the composition of the Committee an even mix of management and employee representatives?
- ✓ Is the Committee of a manageable size?
- ✓ Is there a process for selecting the co-chairpersons?

- ✓ Are there written rules of procedure?
- ✓ Do the rules of procedure address:
 - ✓ alternating the Chairperson;
 - ✓ scheduling regular meetings;
 - ✓ scheduling emergency meetings;
 - ✓ establishing agenda items;
 - ✓ preparing and distributing the agenda;
 - ✓ recording, preparing and distributing the minutes;
 - ✓ the length of the term of office for Committee members;
 - ✓ repeating a term of office for the purpose of retaining the base of expertise;
 - ✓ rotation of membership (alternate years);
 - ✓ union officials as members;
 - ✓ pre-planned use of alternative;
 - ✓ preparation and travel time;
 - ✓ committee operations and process;
 - ✓ consensus agreements; and
 - ✓ dealing with non-consensus issues?

3.5 TRAINING

The *Canada Labour Code* requires that Policy/Workplace Committee members, managers/supervisors and employees receive the following training:

Policy Committee Members

- The roles and responsibilities of both the Policy and the Workplace Health and Safety Committees;
- the duty of an employer to establish a committee;
- the internal complaint resolution process; and

- the right to refuse dangerous work.

Workplace Committee Members

- The roles and responsibilities of both the Policy and the Workplace Health and Safety Committees;
- overview of the *Canada Labour Code*;
- the internal complaint resolution process;
- the right to refuse dangerous work; and
- workplace inspection.

Senior Management

- Due diligence;
- the duties of employers;
- the roles and responsibilities of both the Policy and the Workplace Health and Safety Committees;
- the rights of employees; and
- the internal complaint resolution process.

Managers and Supervisors

- Due diligence;
- the duties of employers and employees;
- the roles and responsibilities of both the Policy and the Workplace Health and Safety Committees;
- the rights of employees;

- the internal complaint resolution process; and
- hazardous occurrence investigations.

Employees

- Due diligence;
- the roles and responsibilities of both the Policy and the Workplace Health and Safety Committees;
- the rights of employees;
- the internal complaint resolution process; and
- the duties of employees.

When appropriate, ongoing training will be given for:

- back care and safe lifting practices;
- office ergonomics;
- first aid and cardiopulmonary resuscitation (CPR); and
- the Workplace Hazardous Material Information System (WHMIS).

Depending on work-related duties, prescribed specialized training will be offered on an "as needed" basis for the following:

- personal protective equipment;
- defensive driving and confined space; and
- materials handling equipment.

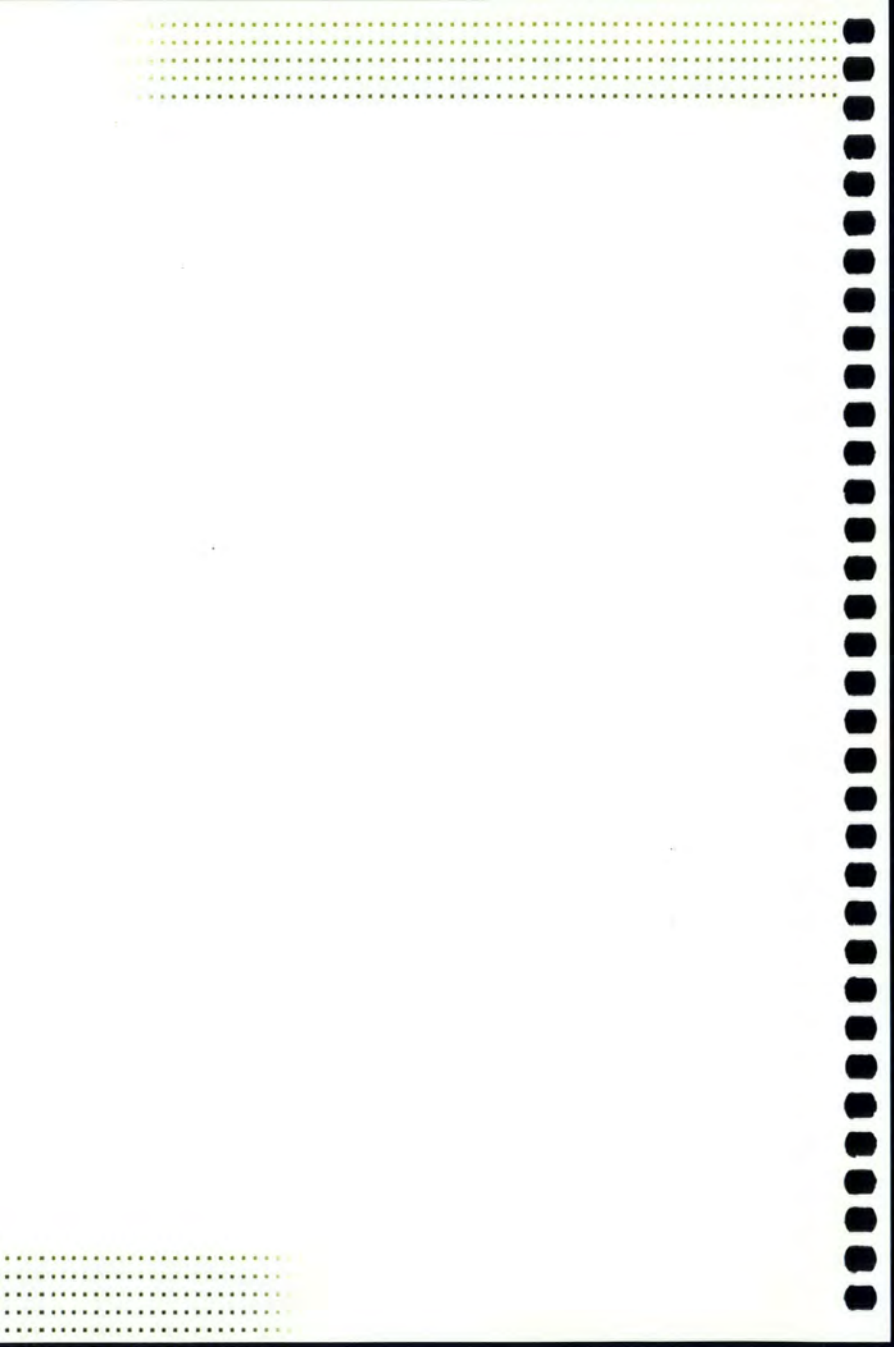
Section 4

OFFENCES AND PUNISHMENT

4.1 OFFENCES AND PUNISHMENT

The *Canada Labour Code* and its regulations can be enforced through fines or possibly imprisonment in the case of criminal offences. Part II of the *Canada Labour Code* defines a criminal offence as the willful breach of health and safety standards when the person in breach knows that serious injury or death is likely. Unlike other offenses under the *Criminal Code*, this offense does not require that someone is actually hurt by the breach.

Where a person charged with an offence, a potential defence is proof that s/he exercised due care and diligence to avoid the offence. The maximum fines for offences under Part II of the *Canada Labour Code* can range from \$100,000 to \$1,000,000. However, the Minister of Labour may seek an injunction where there is a serious risk or where a fine would not be an effective way of achieving compliance with the *Canada Labour Code*.



Section 5

INFORMATION

5.1 FURTHER INFORMATION

More information is available through the following Web sites:

Canada Labour Code, Part II

http://info.load-otea.hrdc-drhc.gc.ca/federal_legislation/part2/legislation/code.htm

Canada Occupational Health and Safety Regulations

http://info.load-otea.hrdc-drhc.gc.ca/federal_legislation/part2/cohsregs/r2toc.htm

Treasury Board Secretariat

Occupational Health and Safety — Policies and Publications

http://publiservice.tbs-sct.gc.ca/hr-rh/osh-sst/index_e.asp

Canadian Centre for Occupational Health and Safety

<http://www.ccohs.ca>

Occupational Health and Workplace Safety Programme

<http://icweb.ic.gc.ca/ohwsp>

Or by contacting:

Manager

Occupational Health & Workplace Safety Programme

Tel: (613) 941-5259

Fax: (613) 954-2303

Health and Safety Officers,

Occupational Health & Workplace Safety

Tel: (613) 957-4494 and 952-6349

Fax: (613) 954-2303



NOTES



