

## LITIGATION

– *Employment Update*

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## An Ounce of Prevention: What Employers Need to Know about Recent Changes to Ontario's Health and Safety System

*By Jessica Eisen*

Ontario has recently passed a new law that changes the face of occupational health and safety regulation in the province. Bill 160, now the *Occupational Health and Safety Statute Law Amendment Act, 2011*, introduces new requirements for employers and restructures governmental responsibility for the prevention of workplace injuries and diseases.

The changes represent Ontario's first legislative steps towards implementing the recommendations of the Expert Advisory Panel on Occupational Health and Safety ("**Expert Panel**") released in December of 2010.

### Changes within Government

Bill 160 centralizes responsibility within the Ministry of Labour for the prevention of workplace injuries and diseases. Formerly, this prevention mandate was assigned to the Workplace Safety and Insurance Board ("**WSIB**"), while the Ministry of Labour's responsibilities were focused on investigation, inspection and enforcement. The Expert Panel had criticized this institutional split as an obstacle to role clarity, accountability, and the integration of workplace incident prevention initiatives.

The centrepieces of the new prevention system are the new role of Chief Prevention Officer ("**CPO**") and a new advisory body known as the Prevention Council. The Prevention Council includes employers, representatives of trade unions and/or provincial labour organizations, non-unionized workers, WSIB representatives, and people with occupational health and safety expertise.

The CPO, the Prevention Council and the Minister of Labour will between them absorb several roles formerly assigned to the WSIB, including the promotion of public awareness and education of workplace parties; Joint Health and Safety Committee ("**JHSC**") member certification; and the recognition of "designated entities" eligible for grants, such as safe workplace associations, medical clinics, and training centres. The CPO and Prevention Council will also take on new roles, such as developing and reporting on annual "prevention strategies" and advising the Minister of Labour on significant changes to funding and program delivery in the prevention sphere.

### New Training Requirements Expected

The CPO is authorized to establish standards and approve trainers and programs to meet the requirements of the *Occupational Health and Safety Act* ("**OHS**A") and its regulations. The CPO is also authorized to collect information and maintain records about a worker's completion of such programs.

Workplace parties should be on the alert for changes to training requirements, since many of the Expert Panel's recommendations (such as mandatory health and safety training for all supervisors) would have a wide-ranging impact if implemented. In accordance with the recommendations of the Expert Panel, new requirements will likely focus on young workers; small businesses; combating the underground economy; supervisor training; and heightened training requirements for high-risk occupations, including mandatory entry-level training for construction workers.

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### Changes to the Internal Responsibility System

In the workplace, the Internal Responsibility System (“IRS”) will retain its central role in incident prevention, and Bill 160 introduces several provisions which aim to strengthen the IRS. For example, Bill 160 has instituted changes that now allow JHSC co-chairs to make independent recommendations to the employer in cases where a JHSC has been unable to reach a consensus. As with recommendations from the JHSC as a whole, employers and constructors will be required to respond in writing to the independent recommendations of co-chairs, with a timetable for implementation or reasons for refusing any recommendations that are not accepted.

The training requirements for JHSC member certification are also likely to change in light of complaints noted by the Expert Panel regarding the content and delivery of JHSC training. These changes will come from the CPO, which has taken over responsibility for JHSC certification from the WSIB.

Employers and constructors in workplaces with 6 to 19 regularly employed workers will be required to provide training for Health and Safety Representatives to enable them to effectively exercise their powers and duties; previously, there were no training requirements for such

Representatives. Bill 160 also empowers the Lieutenant-Governor-in-Council to prescribe specific requirements for this newly required training.

### Increased Protection against Reprisal

Bill 160 also addresses some of the concerns raised by the Expert Panel regarding protection against reprisal for workers who assert their rights under the OHSA. Under the amended OHSA, inspectors will have the authority in some circumstances to refer suspected reprisals to the Ontario Labour Relations Board (“OLRB”). The Office of the Worker Advisor and the Office of the Employer Advisor (which are continued under the *Workplace Safety and Insurance Act* (“WSIA”)) may now be prescribed advisory roles to assist non-unionized workers and small employers in navigating OLRB reprisal proceedings. The amendments also grant authority to the Chair of the OLRB to establish rules to expedite reprisal complaints and referrals.

The Expert Panel has also recommended stronger enforcement and a review of the prosecution policy with respect to reprisals. This is a policy choice that may be adopted although it is not manifest in the legislative changes of Bill 160. As described directly below under the heading “Consequences for Non-compliance”, the potential liability in such a prosecution is significant.

### Consequences for Non-compliance

As with any requirement under the OHSA, failure to comply with the new requirements may result in orders being issued, fines levied, or even prosecution under Part III of the *Provincial Offences Act*; such consequences may be applied against various workplace parties, including constructors, employers, supervisors, or even workers. Convictions on prosecution may result in fines of up to \$25,000 or 12 months imprisonment for an individual, or up to \$500,000 for a corporation.

### Conclusion

Bill 160 received Royal Assent on June 1, 2011; an interim Prevention Council is already in place and recruitment of the first CPO has begun. Note that JHSC members certified under the WSIA will be deemed certified under the new framework, and that until the Minister establishes otherwise, “designated entities” under the WSIA will be deemed designated. For more specific “coming into force” information, consult s. 29 of Bill 160, available online at [http://www.ontla.on.ca/bills/bills-files/39\\_Parliament/Session2/b160ra.pdf](http://www.ontla.on.ca/bills/bills-files/39_Parliament/Session2/b160ra.pdf).

To determine whether your workplace is in compliance, or for other information about your rights and responsibilities under the OHSA, please contact Jessica Eisen.

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