

2012

CHAPTER 25

An Act to amend *The Occupational Health and Safety Act, 1993*

(Assented to May 16, 2012)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Occupational Health and Safety Amendment Act, 2012*.

S.S. 1993, c.O-1.1 amended

2 *The Occupational Health and Safety Act, 1993* is amended in the manner set forth in this Act.

Section 2 amended

3(1) **Subsection 2(1) is amended:**

(a) **by repealing clause (a.1) and substituting the following:**

“(a.1) **‘biological substance’** means a substance containing living organisms, including infectious micro-organisms, or parts of organisms or products of organisms in their natural or modified forms;

“(a.2) **‘business day’** means a day other than a Saturday, Sunday or holiday”;

(b) **by adding the following clauses after clause (c):**

“(c.1) **‘competent’** means possessing knowledge, experience and training to perform a specific duty;

“(c.2) **‘compliance undertaking’** means a compliance undertaking entered into pursuant to section 30”;

(c) **by repealing clause (d) and substituting the following:**

“(d) **‘contractor’** means a person who, or a partnership or group of persons that, pursuant to one or more contracts:

(i) directs the activities of one or more employers or self-employed persons involved in work at a place of employment; or

(ii) subject to subsection (2.1), retains an employer or self-employed person to perform work at a place of employment”;

(d) **by repealing clause (e);**

(e) **by adding the following clauses after clause (n):**

“(n.1) ‘**ministry**’ means the ministry over which the minister presides;

“(n.2) ‘**notice of contravention**’ means a notice of contravention issued pursuant to section 30”;

(f) **by adding the following clause after clause (z):**

“(z.1) ‘**prime contractor**’ means the person who is the prime contractor for a worksite in accordance with subsection 6.1(3)”;

(g) **by adding the following clause after clause (dd):**

“(dd.1) ‘**supervisor**’ means a person who is authorized by an employer to oversee or direct the work of the employer’s worker”;

(h) **by adding the following clause after clause (ee):**

“(ee.1) ‘**train**’ means to give information and explanation to a worker with respect to a particular subject-matter and to require a practical demonstration that the worker has acquired knowledge or skill related to the subject-matter”; **and**

(i) **by repealing clause (ff) and substituting the following:**

“(ff) ‘**worker**’ means:

- (i) a person who is engaged in the service of an employer; or
- (ii) a prescribed person or a member of a prescribed category of persons;

but does not include an inmate, as defined in *The Correctional Services Act*, who is within a correctional facility as defined in *The Correctional Services Act* and who is participating in a work project or rehabilitation program within the correctional facility”.

(2) **The following subsection is added after subsection 2(2):**

“(2.1) For the purposes of subclause (1)(d)(ii), a person, partnership or group of persons is considered to be a contractor only if that person, partnership or group of persons knows or ought reasonably to know the provisions of this Act and the regulations respecting the work or the place of employment at the time of retaining the employer or self-employed person to perform work at a place of employment”.

New sections 3 and 3.1

4 Section 3 is repealed and the following substituted:

“General duties of employers

3 Every employer shall:

- (a) ensure, insofar as is reasonably practicable, the health, safety and welfare at work of all of the employer’s workers;

- (b) consult and co-operate in a timely manner with any occupational health committee or the occupational health and safety representative at the place of employment for the purpose of resolving concerns on matters of health, safety and welfare at work;
- (c) make a reasonable attempt to resolve, in a timely manner, concerns raised by an occupational health committee or occupational health and safety representative pursuant to clause (b);
- (d) ensure, insofar as is reasonably practicable, that the employer's workers are not exposed to harassment with respect to any matter or circumstance arising out of the workers' employment;
- (e) co-operate with any other person exercising a duty imposed by this Act or the regulations;
- (f) ensure that:
 - (i) the employer's workers are trained in all matters that are necessary to protect their health, safety and welfare; and
 - (ii) all work at the place of employment is sufficiently and competently supervised;
- (g) if the employer is required to designate an occupational health and safety representative for a place of employment, ensure that written records of meetings with the occupational health and safety representative are kept and are readily available at the place of employment;
- (h) ensure, insofar as is reasonably practicable, that the activities of the employer's workers at a place of employment do not negatively affect the health, safety or welfare at work of the employer, other workers or any self-employed person at the place of employment; and
- (i) comply with this Act and the regulations.

"General duties of supervisors

3.1 Every supervisor shall:

- (a) ensure, insofar as is reasonably practicable, the health and safety at work of all workers who work under the supervisor's direct supervision and direction;
- (b) ensure that workers under the supervisor's direction comply with this Act and the regulations;
- (c) ensure, insofar as is reasonably practicable, that all workers under the supervisor's direct oversight and direction are not exposed to harassment at the place of employment;
- (d) co-operate with any other person exercising a duty imposed by this Act or the regulations; and
- (e) comply with this Act and the regulations".

New section 6.1

5 The following section is added after section 6:**“General duties of prime contractors at certain multiple-employer worksites****6.1(1)** In this section and section 44:

- (a) **‘designated activities’** means prescribed activities or operations;
- (b) **‘designated supervisor’** means a supervisor who is designated by an employer pursuant to subsection (6).

(2) Every worksite must have a prime contractor if workers of two or more employers or self-employed persons are engaged on the worksite at the same time in one or more designated activities.

(3) If a worksite is required by subsection (2) to have a prime contractor, the prime contractor is:

- (a) the contractor, employer or other person who enters into a written agreement with the owner of the worksite to be the prime contractor; or
- (b) if no agreement mentioned in clause (a) has been made or is in force, the owner of the worksite.

(4) The prime contractor at a worksite that is required to have a prime contractor pursuant to subsection (2) shall:

- (a) ensure that the names and method of contacting the prime contractor and the individual identified pursuant to clause (d) are posted at a conspicuous location at the worksite;
- (b) ensure that all activities at the worksite that may affect the health and safety of workers or self-employed persons are coordinated;
- (c) ensure, insofar as is reasonably practicable, that all employers and self-employed persons have adequate and appropriate policies, procedures, safe work practices, equipment, competent workers and information to ensure that:
 - (i) the employers and the self-employed persons comply with this Act and the regulations;
 - (ii) the activities of the employers and the self-employed persons or the activities of their workers do not jeopardize the health and safety of a worker or self-employed person at the worksite; and
 - (iii) the employers and the self-employed persons and their workers comply with any health and safety related policies and procedures implemented by the prime contractor;
- (d) identify a competent person to oversee and direct, on behalf of the prime contractor, the activities of employers and self-employed persons at the worksite;
- (e) prepare a written plan that:
 - (i) addresses how the requirements imposed by clauses (b) and (c) are being met;

- (ii) sets out the name of and method of contacting the individual identified pursuant to clause (d);
 - (iii) identifies the supervisors for the worksite designated by employers pursuant to clause (6)(a); and
 - (iv) addresses other prescribed matters;
 - (f) deliver a copy of the written plan mentioned in clause (e) to all employers and self-employed persons before they or their workers commence working at the worksite;
 - (g) co-operate with any other person exercising a duty imposed by this Act or the regulations; and
 - (h) comply with this Act and the regulations.
- (5) Every employer, self-employed person and supplier at a worksite required to have a prime contractor pursuant to subsection (2) shall co-operate and comply with any reasonable direction issued by the prime contractor or the individual identified pursuant to clause (4)(d) in carrying out their duties pursuant to this section.
- (6) Every employer of workers at a worksite that is required to have a prime contractor pursuant to subsection (2) shall:
- (a) designate a competent person as the designated supervisor for the employer's workers at the worksite; and
 - (b) give the prime contractor the name of the person designated as the designated supervisor pursuant to clause (a).
- (7) Subject to the regulations, every designated supervisor shall fulfil the duties imposed on supervisors by this Act and the regulations and shall fulfil any other prescribed duties.
- (8) Nothing in this section is to be interpreted as limiting or replacing the duties or requirements imposed by this Act and the regulations on an employer or any other person”.

New section 8

6 Section 8 is repealed and the following substituted:

“General duties of suppliers

8 Every supplier shall:

- (a) ensure, insofar as is reasonably practicable, that any substance or any plant supplied by the supplier to any owner, contractor, employer, worker or self-employed person for use in or at a place of employment:
 - (i) is safe when used in accordance with the instructions provided by the supplier; and
 - (ii) complies with the requirements of this Act and the regulations;

- (b) in the prescribed circumstances:
 - (i) provide written instruction respecting the safe use of equipment that is supplied by the supplier to be used in or at a place of employment by workers; and
 - (ii) provide notice when equipment supplied does not or will not likely comply with a prescribed standard when used at a place of employment by workers;
- (c) if the supplier has responsibility under a leasing agreement to maintain equipment, maintain that equipment in a safe condition and in compliance with the regulations and any applicable orders issued pursuant to the regulations; and
- (d) comply with this Act and the regulations”.

Section 9 amended

7 Subsection 9(2) is amended in the portion preceding clause (a) by striking out “provide all required information” and substituting “keep readily available all required information and provide that information”.

Section 11 amended

8 Subsection 11(1) is amended by striking out “is practicable” and substituting “possible”.

Section 12 amended

9(1) Subsection 12(1) is amended by adding “in writing” after “designate”.

(2) Subsection 12(3) is amended by adding “in writing” after “specify”.

(3) The following subsection is added after subsection 12(4):

“(5) Nothing in this section is to be interpreted as limiting or replacing the duties or requirements imposed on employers and workers by this Act or the regulations, including any duties related to occupational health committees or occupational health and safety representatives”.

Section 13 amended

10 The following subsections are added after subsection 13(5):

“(6) The director may order an employer or prime contractor to develop an occupational health and safety program for a place of employment if the director considers it to be in the interests of the health, safety and welfare of the employer’s or prime contractor’s workers based on the criteria set out in subsection (8).

“(7) An order issued pursuant to subsection (6) must be in writing.

“(8) In making an order pursuant to subsection (6), the director shall consider the following criteria:

- (a) the frequency of occupationally related injuries and illnesses at the place of employment;

- (b) the number and nature of the notices of contravention relating to the place of employment and the history of compliance with those orders and with compliance undertakings;
- (c) any additional criteria that the director considers appropriate to protect the health, safety and welfare of workers”.

New section 14

11 Section 14 is repealed and the following substituted:

“Duty re policy statement on violence and prevention plan

14(1) An employer at a prescribed place of employment where violent situations have occurred or may reasonably be expected to occur shall develop and implement a written policy statement and prevention plan to deal with potentially violent situations after consultation with:

- (a) the occupational health committee;
- (b) the occupational health and safety representative; or
- (c) the workers, if there is no occupational health committee and no occupational health and safety representative.

(2) A policy statement and prevention plan required by subsection (1) must include any prescribed provisions”.

Section 15 amended

12 Subsection 15(4) is repealed and the following substituted:

“(4) No person shall be designated as a member of an occupational health committee who represents workers unless the person:

- (a) has been elected from the place of employment for that purpose by the workers whom the person would represent;
- (b) has been appointed from the place of employment in accordance with the constitution or bylaws of the trade union of which the workers are members; or
- (c) if more than one trade union represents the workers whom the person would represent on the committee, has been appointed for that purpose from the place of employment pursuant to an agreement among all of those trade unions”.

New section 15.1

13 The following section is added after section 15:

“Director may order additional or new occupational health committees

15.1(1) Notwithstanding section 15, but subject to subsections (2) to (4) and the regulations, the director may order an employer or contractor to establish:

- (a) an additional occupational health committee if, in the opinion of the director, the place of employment would be better served by more than one committee; or
- (b) an occupational health committee to protect the health, safety and welfare of the workers if an occupational health committee is not otherwise required.

- (2) An order issued pursuant to subsection (1) must be in writing.
- (3) In an order issued pursuant to this section, the director may specify the composition, practice and procedures of the occupational health committee.
- (4) In making an order pursuant to this section, the director shall consider the following criteria:
 - (a) the nature of the work performed at the place of employment;
 - (b) any request to establish an occupational health committee made by an employer, a prime contractor, a worker or trade union representing workers at the place of employment;
 - (c) the frequency of occupationally related injuries and illnesses at the place of employment or in the industry with which the place of employment is associated;
 - (d) any additional criteria that the director considers appropriate to protect the health, safety and welfare of workers”.

Section 19 amended

14 Section 19 is amended:

- (a) **by renumbering it as subsection 19(1); and**
- (b) **by adding the following subsection after subsection (1):**
 - “(2) An employer or contractor shall ensure that the duties of the occupational health committee imposed by this Act or the regulations are not diminished by any other committee established within the place of employment by the employer or contractor”.

New heading for Part V

15 The heading for Part V is repealed and the following substituted:

**“PART V
Compliance Undertakings and Notices of Contravention”.**

New section 30

16 Section 30 is repealed and the following substituted:

“Compliance undertakings and notices of contravention

30(1) An occupational health officer shall act pursuant to subsection (2) if the occupational health officer is of the opinion that a person:

- (a) is contravening any provision of this Act or the regulations; or
 - (b) has contravened any provision of this Act or the regulations in circumstances that make it likely that the contravention will continue or will be repeated.
- (2) In the circumstances mentioned in subsection (1), the occupational health officer shall:
- (a) subject to subsection (4), require the person to enter into a compliance undertaking; or
 - (b) serve a notice of contravention on the person.

- (3) For the purposes of subsection (2):
 - (a) a compliance undertaking must:
 - (i) be in writing and in the form approved by the director;
 - (ii) contain a description by the occupational health officer of the action to be undertaken by the person; and
 - (iii) contain the person's signed commitment to:
 - (A) comply or improve compliance with the contravened provision of this Act or regulation within a period specified by the occupational health officer in the compliance undertaking; and
 - (B) provide a progress report in accordance with section 35; and
 - (b) a notice of contravention must:
 - (i) cite the contravened provision of this Act or the regulations;
 - (ii) state the reasons for the occupational health officer's opinion; and
 - (iii) require the person to remedy the contravention within a period specified by the occupational health officer in the notice of contravention.
- (4) An occupational health officer shall not allow a person to enter into a compliance undertaking if a provision of this Act or the regulations requires that a notice of contravention be issued.
- (5) An occupational health officer may serve a notice of contravention on a person notwithstanding that the person has entered into a compliance undertaking if:
 - (a) the person fails to comply with the compliance undertaking or to provide a progress report in compliance with section 35; or
 - (b) in the opinion of the occupational health officer, it is necessary to do so to prevent a risk to the health and safety of a worker or it is otherwise in the public interest".

New sections 34 and 35

17 Sections 34 and 35 and repealed and the following substituted:

"Copy of compliance undertaking or notice of contravention

34 If a person enters into a compliance undertaking or an occupational health officer serves a notice of contravention on any person, the occupational health officer shall:

- (a) if there is an occupational health committee or an occupational health and safety representative at the place of employment with respect to which the compliance undertaking or notice of contravention applies, provide the occupational health committee or the occupational health and safety representative with a copy of the compliance undertaking or notice of contravention; or

- (b) if there is no occupational health committee or occupational health and safety representative at the place of employment with respect to which the compliance undertaking or notice of contravention applies, post a copy of the compliance undertaking or notice of contravention in a conspicuous location at that place of employment.

“Progress report

35 Within five business days after the end of the period specified in a compliance undertaking or notice of contravention within which a contravention is to be remedied, the person who entered into the compliance undertaking or on whom the notice of contravention is served:

(a) shall:

(i) provide the occupational health committee or occupational health and safety representative at the place of employment with respect to which the compliance undertaking or notice of contravention applies with a written report of the progress that has been made towards remedying each contravention of the Act or regulations that is stated in the compliance undertaking or notice of contravention; or

(ii) if no occupational health committee or occupational health and safety representative exists at the place of employment with respect to which the compliance undertaking or notice of contravention applies, post in a conspicuous location at the place of employment a written report of the progress that has been made towards remedying each contravention of the Act or regulations that is stated in the compliance undertaking or notice of contravention; and

(b) shall provide the occupational health officer who received the compliance undertaking or who issued the notice of contravention with a written report of the progress that has been made towards remedying each contravention of the Act or regulations that is stated in the compliance undertaking or notice of contravention”.

Section 43 amended

18 Subsection 43(1) is amended by striking out “department” and substituting “ministry”.

Section 44 amended

19 Subsection 44(1) is amended:

(a) by adding the following clauses after clause (c):

“(c.1) for the purposes of clause 2(1)(ff), prescribing persons or categories of persons as workers;

“(c.2) for the purposes of section 6.1:

(i) prescribing activities or operations as designated activities;

(ii) prescribing other matters to be included in the written plan required by clause 6.1(4)(e); and

(iii) for the purposes of subsection 6.1(7), prescribing duties to be fulfilled by supervisors;

“(c.3) for the purposes of clause 8(b):

- (i) prescribing circumstances when a supplier must act in accordance with that clause; and
- (ii) prescribing standards that equipment must be in compliance with;

“(c.4) for the purposes of section 14:

- (i) prescribing places of employment respecting which an employer shall develop and implement a written policy statement and prevention plan; and
- (ii) prescribing provisions that must be included in a policy statement and prevention plan;

“(c.5) for the purposes of section 15.1, respecting the establishment of additional occupational health committees and governing the powers of the director in ordering the establishment of additional occupational health committees;

“(c.6) for the purposes of section 49:

- (i) prescribing persons or classes of persons as persons directly affected by a decision of an occupational health officer; and
- (ii) prescribing persons or classes of persons who are not persons directly affected by a decision of an occupational health officer”;
and

(b) by adding the following clauses after clause (nn):

“(nn.1) prescribing how documents or notices must be served on the director;

“(nn.2) for the purposes of section 73:

- (i) prescribing the circumstances in which an employer must compile, post and distribute statistics;
- (ii) prescribing the manner in which statistics must be compiled; and
- (iii) prescribing the matters to be included in the compilation of statistics”.

Section 48 amended

20 Subsection 48(1) is amended by striking out “section 56.1” and substituting “section 56.3”.

Section 49 amended

21 Subsection 49(1) is repealed and the following substituted:

“(1) In this section and in sections 50, 56 and 56.3, ‘**person who is directly affected by a decision**’ means any of the following persons to whom a decision is directed and who is directly affected by that decision:

- (a) a worker;
- (b) an employer;
- (c) a self-employed person;
- (d) a contractor;
- (e) an owner;
- (f) a supplier;
- (g) any other prescribed person or member of a class of prescribed persons;

but does not include any prescribed person or class of prescribed persons.

“(1.1) A person who is directly affected by a decision of an occupational health officer, other than a decision that may be appealed to a special adjudicator pursuant to section 56.3, may, within 15 business days after the date of service of the decision, appeal the decision to the director by notice in writing”.

Section 50 amended

22(1) Subsection 50(1) is amended by striking out “21 days after the date of the decision” and substituting “15 business days after the date of service of the decision”.

(2) Clause 50(2)(a) is repealed and the following substituted:

“(a) sets out the names of all persons who are directly affected by the decision appealed against”.

New sections 56 to 56.4

23 Sections 56 and 56.1 are repealed and the following substituted:**“Appeals to Court of Queen’s Bench**

56(1) A person who is directly affected by a decision of an adjudicator may appeal to the Court of Queen’s Bench:

- (a) a decision of an adjudicator on a question of law or a question of jurisdiction; and
- (b) a decision of an adjudicator in relation to section 33.

(2) A person who is directly affected by a decision of an adjudicator and who wishes to appeal that decision shall file the appeal within 15 business days after the date of service of the decision of the adjudicator.

(3) A notice of appeal is to be served on:

- (a) the director; and
- (b) the other parties to the proceedings before the adjudicator.

- (4) When a notice of appeal is served on the director or if the director makes the appeal, the director shall immediately file the record of the proceedings before the adjudicator in the office of the local registrar of the Court of Queen's Bench at the judicial centre nearest to where the adjudicator's decision or order was made.
- (5) The record of appeal is to consist of:
- (a) any written decision of an occupational health officer respecting the matter that is the subject of the appeal;
 - (b) the written decision of the director respecting the matter that is the subject of the appeal;
 - (c) the notice of appeal filed with the director pursuant to section 50;
 - (d) the written decision of the adjudicator; and
 - (e) the notice of appeal commencing the appeal.
- (6) If an appeal is taken pursuant to this section, a judge of the Court of Queen's Bench may:
- (a) affirm or reverse the decision or order of the adjudicator; or
 - (b) remit the matter back to the adjudicator for amendment of the adjudicator's decision or order.

“Appeal to Court of Appeal

56.1(1) With leave of a judge of the Court of Appeal, an appeal may be made to the Court of Appeal from a decision of the Court of Queen's Bench pursuant to section 56 on a question of law or jurisdiction.

(2) A person, including the director, wishing to make an appeal shall apply for leave to appeal within 15 business days after the date of service of the decision of the Court of Queen's Bench.

“Director entitled to be heard

56.2(1) Subject to subsection (2), the director is a party to any appeal taken pursuant to section 50, 51, 56, 56.1 or 56.3 and is entitled to be heard, by counsel or otherwise, on the appeal.

(2) The director's role in any appeal mentioned in subsection (1) is to be limited to matters concerning the administration or interpretation of this Act.

“Appeals to special adjudicator - re harassment

56.3(1) A person who is directly affected by a decision of an occupational health officer respecting any matter involving harassment may appeal the decision to a special adjudicator.

(2) Subsections 50(2) and (3) and sections 52 to 56.2 and 56.4 apply, with any necessary modification, to any appeals to a special adjudicator, any hearings conducted by a special adjudicator, any decisions of a special adjudicator and any appeals of a decision of a special adjudicator.

(3) On receipt of a notice of appeal pursuant to this Part from the director, a special adjudicator:

(a) shall make every effort that the special adjudicator considers reasonable to meet with the parties affected by the occupational health officer's decision that is being appealed with a view to encouraging a settlement of the matter that is the subject of the occupational health officer's decision; and

(b) with the agreement of the parties, may use mediation, conciliation or other procedures to encourage a settlement of the matter mentioned in clause (a) at any time before or during a hearing pursuant to this section.

(4) Unless the matter that is the subject of the occupational health officer's decision has been settled, a special adjudicator shall render a decision in accordance with this Part within one year after the date the director received the notice of appeal.

“Service

56.4(1) Unless otherwise provided in this Act, any document or notice required by this Act or the regulations to be served on any person other than the director may be served:

(a) by personal service on the person by delivery of a copy of the document or notice;

(b) by sending a copy of the document or notice by registered or certified mail to the last known address of the person or to the address of the person as shown in the records of the ministry;

(c) by personal service at a place of employment on the person's manager, agent, representative, officer, director or supervisor;

(d) by any of the methods set out in *The Queen's Bench Rules* for the service of documents; or

(e) by delivering a copy to the person's lawyer if the lawyer accepts service by endorsing his or her name on a true copy of the document or notice indicating that he or she is the lawyer for that person.

(2) A document or notice to be given to or served on the division or the director must be given or served in the prescribed manner.

(3) A document or notice served by registered mail or certified mail is deemed to have been received on the fifth business day following the day of its mailing, unless the person to whom it was mailed establishes that, through no fault of that person, the person did not receive the document or notice.

(4) If the director is unable to effect service by the methods set out in subsection (1) after making reasonable efforts to do so, the director may serve a document or notice by publishing it in a newspaper of general circulation in the area in which the person was last known to reside.

(5) Any person who is required to serve a document or notice pursuant to this Act or the regulations may apply, *ex parte*, to a judge of the Court of Queen's Bench for an order for substituted service or for an order dispensing with service.

(6) On an application pursuant to subsection (5), a judge of the Court of Queen's Bench may make an order for substituted service by any means that the judge considers appropriate or an order dispensing with service, if the judge is satisfied that:

- (a) prompt service of the document or notice cannot be effected;
- (b) the whereabouts of the person to be served cannot be determined; or
- (c) the person to be served is evading service".

Section 58 amended

24(1) Subsection 58(1) is amended by striking out "\$2,000" and substituting "\$4,000".

(2) Subsection 58(2) is amended:

(a) in clause (a) by striking out "\$5,000" and substituting "\$10,000"; and

(b) in clause (b) by striking out "\$500" and substituting "\$1,000".

(3) Subsection 58(4) is repealed and the following substituted:

"(4) A person who is convicted of an offence mentioned in subsection (3) is liable:

- (a) for a first offence:
 - (i) that is a single, isolated offence, to a fine not exceeding \$20,000;
 - (ii) that is a continuing offence:
 - (A) to a fine not exceeding \$20,000; and
 - (B) to a further fine not exceeding \$2,000 for each day or portion of a day during which the offence continues;
- (b) for a second or subsequent offence:
 - (i) that is a single, isolated offence, to a fine not exceeding \$40,000;
 - (ii) that is a continuing offence:
 - (A) to a fine not exceeding \$40,000; and
 - (B) to a further fine not exceeding \$4,000 for each day or portion of a day during which the offence continues".

(4) Subsection 58(6) is repealed and the following substituted:

"(6) A person who is convicted of an offence mentioned in subsection (5) is liable:

- (a) for a first offence:
 - (i) that is a single, isolated offence, to a fine not exceeding \$100,000;

- (ii) that is a continuing offence:
 - (A) to a fine not exceeding \$100,000; and
 - (B) to a further fine not exceeding \$10,000 for each day or portion of a day during which the offence continues;
 - (b) for a second or subsequent offence:
 - (i) that is a single, isolated offence, to a fine not exceeding \$200,000;
 - (ii) that is a continuing offence:
 - (A) to a fine not exceeding \$200,000; and
 - (B) to a further fine not exceeding \$20,000 for each day or portion of a day during which the offence continues”.
- (5) Subsection 58(7) is amended by striking out “\$300,000” and substituting “\$1,500,000”.**

New sections 62 and 62.1

25 Section 62 is repealed and the following substituted:

“Onus on accused re duty or requirement

62 In any proceedings for an offence pursuant to this Act or the regulations consisting of a failure to comply with a duty or requirement to do something so far as is practicable or so far as is reasonably practicable, or to use the best practicable means to do something, the onus is on the accused to prove, as the case may be, that it was not practicable or not reasonably practicable to do more than was actually done to satisfy the duty or requirement, or that there was no better practicable means than was actually used to satisfy the duty or requirement.

“Onus on accused re training of workers

62.1 In any proceedings for an offence pursuant to this Act or the regulations consisting of a failure to comply with a duty or requirement related to the training of workers, the onus is on the accused to prove that the training provided met the requirements of this Act and the regulations”.

Section 72 amended

26(1) Subsection 72(1) is amended:

- (a) in the portion preceding clause (a) by adding “do all or any of the following” after “may”;**
- (b) by adding the following clause after clause (f):**
 - “(f.1) require the production of, inspect and take copies of any existing records related to training workers on matters related to occupational health and safety”; **and**
- (c) by adding the following clause after clause (h):**
 - “(i) subject to subsection (1.1), require any person who the occupational health officer has reasonable cause to believe possesses any information respecting a work related fatality, serious injury or allegation of harassment to attend an interview and provide full and correct answers to any questions that the officer believes it necessary to ask”.

(2) The following subsection is added after subsection 72(1):

“(1.1) An interview held pursuant to clause (1)(i) is to be held in the absence of persons other than:

- (a) a person nominated to be present by the person being interviewed; and
- (b) any other persons whom the occupational health officer may allow to be present”.

Section 73 amended

27 Section 73 is amended:

(a) by renumbering it as subsection 73(1); and

(b) by adding the following subsections after subsection (1):

“(2) In the prescribed circumstances, an employer must compile occupationally related injury and illness statistics for the place of employment.

“(3) An employer must compile statistics in the prescribed manner and ensure that the compilation of the statistics includes the prescribed matters.

“(4) The statistics must be compiled and provided in a manner that protects the confidentiality of workers.

“(5) The employer shall:

- (a) post the statistics for the information of workers; and
- (b) provide the statistics to:
 - (i) if there is an occupational health committee, the occupational health committee;
 - (ii) if there is an occupational health and safety representative, the occupational health and safety representative; and
 - (iii) if there is no occupational health committee or occupational health and safety representative, the workers”.

New sections 73.1 and 73.2

28 The following sections are added after section 73:

“Report re condition of plant

73.1(1) If the director is of the opinion that the health and safety of a worker may be at risk as a consequence of the condition of a plant, the director may issue a written direction to an employer, contractor, owner or supplier requiring the employer, contractor, owner or supplier:

- (a) to have, at the employer’s, contractor’s, owner’s or supplier’s own expense, a person with the qualifications that the director may specify in the direction conduct those tests or examinations that the director may require in the direction; and

(b) to provide the director with a written report by the qualified person mentioned in clause (a) setting out the results of those tests or examinations.

(2) No employer, contractor, owner or supplier shall fail to comply with a direction issued to the employer, contractor, owner or supplier pursuant to this section.

“Requirement to perform tests or examinations

73.2(1) If the director is of the opinion that the health and safety of a worker may be at risk from a substance at work, the director may issue a written direction to an employer or owner requiring the employer or owner:

(a) to have, at the employer’s or owner’s own expense, a person with the qualifications that the director may specify in the direction conduct those tests or examinations that the director may require in the direction; and

(b) to provide the director with a written report by the qualified person mentioned in clause (a) setting out the results of those tests or examinations.

(2) No employer or owner shall fail to comply with a direction issued to the employer or owner pursuant to this section”.

Section 85 amended

29 Section 85 is amended:

(a) in clause (j) by striking out “department” and substituting “ministry”;

(b) by striking out “or” after clause (k);

(c) by adding “or” after clause (l); and

(d) by adding the following clause after clause (l):

“(m) an adjudicator or special adjudicator designated or appointed pursuant to section 48 or 48.1”.

Coming into force

30 This Act comes into force on proclamation.