

1988 BILL 35

Third Session, 21st Legislature, 37 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 35

**OCCUPATIONAL HEALTH AND SAFETY
AMENDMENT ACT, 1988**

THE MINISTER OF COMMUNITY AND
OCCUPATIONAL HEALTH

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 35

1988

OCCUPATIONAL HEALTH AND SAFETY AMENDMENT ACT, 1988

(Assented to _____, 1988)

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

- 1 *The Occupational Health and Safety Act is amended by this Act.*
- 2 *Section 1 is amended by adding the following after clause (a):*
(a.001) “controlled product” means a substance or material designated in the regulations as a controlled product;
- 3 *Section 2(5) is repealed and the following is substituted:*
(5) Every principal contractor shall ensure, as far as it is reasonably practicable for the principal contractor to do so, that every employer under his direction and every worker of every such employer who is at a work site under the direction of the principal contractor complies with this Act and the regulations.
- 4 *Section 15 is amended*
(a) *by renumbering it as section 15(1);*
(b) *in subsection (1) by striking out “other physician authorized by that Director to carry out that medical examination” and substituting “by the worker’s physician”;*
(c) *by adding the following after subsection (1):*
(2) The employer shall pay for a medical examination of a worker under subsection (1).
- 5 *Section 18(2) is amended by striking out “at a work site”.*
- 6 *Section 19 is amended by adding the following after subsection (3):*
(4) The employer shall pay for medical examinations of a worker under subsection (1).

Explanatory Notes

1 This Bill will amend chapter O-2 of the Revised Statutes of Alberta 1980.

2 Definition.

3 Section 2(5) presently reads:

(5) Every principal contractor shall ensure, as far as it is reasonably practicable for him to do so, that every employer and every worker engaged in an occupation at a work site owned by him or for which he is primarily responsible complies with this Act and the regulations.

4 Section 15 presently reads:

15 A Director of Medical Services may, for the purposes of determining
(a) the extent of any injury suffered by a worker injured in an accident that occurred in respect of that worker's occupation, or
(b) whether a worker is suffering from an occupational disease which is related to that worker's occupation,
require that worker to be medically examined by a Director of Medical Services or other physician authorized by that Director to carry out that medical examination.

5 Section 18(2) presently reads:

(2) A physician, nurse or first aid attendant at a work site who attends a worker who became ill or was injured while engaged in an occupation shall, on the request of a Director of Medical Services, furnish any reports that a Director may require.

6 Section 19(1) presently reads:

19(1) If a worker is employed in a hazardous occupation or at a hazardous work site, a Director of Medical Services may
(a) require that the worker's employer shall, within 30 days of the commencement of the worker's employment, register with a Director the worker's name and the location of the work site where he is employed,

7 *The following is added after section 24:*

24.1 If a controlled product is used, stored, handled or manufactured at a work site, the employer responsible for that work site shall ensure that

- (a) the controlled product is labelled in accordance with the regulations,
- (b) a material safety data sheet for the controlled product, containing the information required by regulation, is made readily available to workers at the work site, and
- (c) a worker who works with a controlled product or in proximity to a controlled product receives education, instruction or training with respect to the controlled product in accordance with the regulations.

8 *Section 26(2) is repealed and the following is substituted:*

(2) A principal contractor or employer who establishes a code of practice pursuant to subsection (1) shall ensure that

- (a) a copy of the code of practice is readily available to the workers and other persons at the work site, and
- (b) all workers to whom the code of practice applies receive appropriate education, instruction or training with respect to the code so that they are able to comply with its requirements.

9 *Section 26.1(1) is amended by striking out “or work process” wherever it occurs and substituting “, work process, first aid service or first aid supplies or equipment”.*

10 *Section 27 is amended by adding the following after subsection (6):*

(7) If a worker who receives a record under subsection (4)(d) is of the opinion that an imminent danger still exists, the worker may file a complaint with an officer.

(8) An officer who receives a complaint under subsection (7) shall prepare a written record of the worker's complaint, the investigation and the action taken and shall give the worker and employer a copy of the record.

(9) A worker or an employer who receives a record under subsection (8) may request a review of the matter by the Council by

- (b) require the worker to have regular medical examinations,*
- (c) prescribe the type and frequency of the medical examinations,*
- (d) prescribe the form and content of medical records to be compiled with respect to that worker, and*
- (e) prescribe the period of time for which those medical records must be maintained.*

7 Controlled product.

8 Section 26(2) presently reads:

- (2) A code of practice shall be posted on the work site in a location where it is conspicuous to the workers and other persons at the work site.*

9 Section 26.1(1) presently reads:

26.1(1) A Director may, in accordance with the regulations, issue in writing an acceptance to an employer or principal contractor if, in his opinion, an alternative tool, appliance, equipment or work process at a work site provides equal or greater protection than that provided for by regulation to persons affected by the tool, appliance, equipment or work process.

10 Section 27 presently reads:

27(1) No worker shall

- (a) carry out any work if, on reasonable and probable grounds, he believes that there exists an imminent danger to the health or safety of that worker,*
- (b) carry out any work if, on reasonable and probable grounds, he believes that it will cause to exist an imminent danger to the health or safety of that worker or another worker present at the work site, or*
- (c) operate any tool, appliance or equipment if, on reasonable and probable grounds, he believes that it will cause to exist an imminent danger to the health or safety of that worker or another worker present at the work site.*

serving a notice of appeal on a Director of Inspection within 30 days from the date of receipt of the record.

(10) After considering the matter the Council may by order

(a) dismiss the request for a review, or

(b) require the employer to eliminate the imminent danger.

(11) An appeal lies to the Court of Queen's Bench from an order of the Council on a question of law or a question of jurisdiction and on hearing the matter the Court may make any order, including the awarding of costs, that the Court considers proper.

(12) An appeal under subsection (11) shall be made by way of originating notice within 30 days from the date that the order of the Council is served on the person appealing the order of the Council.

(13) The commencement of an appeal under subsection (11) does not operate as a stay of the order of the Council being appealed from except insofar as a judge of the Court of Queen's Bench so directs.

11 Section 28.1 is amended by renumbering it as section 28.1(1) and by adding the following after subsection (1):

(2) An officer who receives a complaint under subsection (1) shall prepare a written record of the worker's complaint, the investigation and the action taken and shall give the worker and the employer a copy of the record.

(3) A worker or an employer who receives a record under subsection (2) may request a review of the matter by the Council by serving a notice of appeal on a Director of Inspection within 30 days from the receipt of the record.

(4) After considering the matter the Council may by order

(a) dismiss the request for a review, or

(b) require 1 or more of the following:

(i) reinstatement of the worker to his former employment under the same terms and conditions under which he was formerly employed;

(ii) cessation of disciplinary action;

(iii) payment to the worker of money not more than the equivalent of wages that the worker would have earned if

(2) In this section, "imminent danger" means in relation to any occupation

- (a) a danger which is not normal for that occupation, or*
- (b) a danger under which a person engaged in that occupation would not normally carry out his work.*

(3) A worker who

- (a) refuses to carry out work, or*
- (b) refuses to operate a tool, appliance or equipment*

pursuant to subsection (1) shall, as soon as practicable, notify his employer at the work site of his refusal and the reason for his refusal.

(4) On being notified under subsection (3), the employer shall

- (a) investigate and take action to eliminate the imminent danger,*
- (b) ensure that no worker is assigned to use or operate the tool, appliance or equipment or to perform the work for which a worker has made a notification under subsection (3), unless*
 - (i) the worker to be so assigned is not exposed to imminent danger, or*
 - (ii) the imminent danger has been eliminated,*
- (c) prepare a written record of the worker's notification, the investigation and action taken, and*
- (d) give the worker who gave the notification a copy of the record described in clause (c).*

(5) The employer may require a worker who has given notification under subsection (3) to remain at the work site and may assign him temporarily to other work assignments that he is reasonably capable of performing.

(6) A temporary assignment under subsection (5), if there is no loss in pay, is not disciplinary action for the purposes of section 28.

11 Section 28.1 presently reads:

28.1 A worker who has reasonable cause to believe that he has been dismissed or subjected to disciplinary action in contravention of section 25(6) or 28 may file a complaint with an officer.

he had not been dismissed or had not received disciplinary action;

(iv) removal of any reprimand or other reference to the matter from the worker's employment records.

(5) If the worker has worked elsewhere while the dismissal or disciplinary action has been in effect, wages earned elsewhere shall be deducted from the amount payable to him under subsection (4)(b)(iii).

(6) An appeal lies to the Court of Queen's Bench from an order of the Council on a question of law or a question of jurisdiction and on hearing the matter the Court may make any order, including the awarding of costs, that the Court considers proper.

(7) An appeal under subsection (6) shall be made by way of originating notice within 30 days from the date that the order of the Council is served on the person appealing the order of the Council.

(8) The commencement of an appeal under subsection (6) does not operate as a stay of the order of the Council being appealed from except insofar as a judge of the Court of Queen's Bench so directs.

12 Section 31(1) is amended

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

(a.1) governing health and safety rules, codes or standards to be observed at a work site or at different classes of work site;

(b) in clause (b) by striking out "prescribing" and substituting "governing";

(c) by repealing clause (b.1) and substituting the following:

(b.1) adopting in whole or in part, with any variations, a code, a standard or rules respecting tools, appliances, equipment, work sites or work practices or processes;

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

(n.1) governing the form and contents of material safety data sheets in respect of controlled products;

(e) in clause (r) by adding "controlled product," before "designated";

(f) in clause (s) by adding "controlled product," before "designated";

(g) by adding the following after clause (s):

(s.1) governing the use, storage, handling and manufacturing of controlled products, designated substances and hazardous material;

(h) in clause (t) by striking out "or" at the end of subclause (i), by adding "or" at the end of subclause (ii) and by adding the following after subclause (ii):

(iii) working with a controlled product or in proximity to a controlled product at a work site where it is used, stored, handled or manufactured;

12 Section 31(1) presently reads in part:

31(1) The Lieutenant Governor in Council may make regulations

- (a.1) prescribing health and safety rules or standards to be observed at a work site or at different classes of work sites;*
- (b) prescribing rules or standards for tools, appliances or equipment;*
- (b.1) adopting, in whole or in part, any code of standards respecting any tools, appliances or equipment;*
- (l) defining "serious injury" for the purposes of section 13;*
- (n) governing the form and content of a code or class of codes of practice;*
- (r) designating any substance or material as a designated substance or hazardous material;*
- (s) governing the examination, testing and labelling, or any of them, of a designated substance or hazardous material;*
- (t) governing the instruction, direction, education, qualifications, training or supervision of persons*
 - (i) engaged in occupations designated as hazardous occupations, or*
 - (ii) working at mines or quarries or at or on work sites designated as hazardous work sites;*
- (u) requiring and governing the posting of*
 - (i) health and safety notices issued by a Director,*
 - (ii) orders made under this Act or the regulations,*
 - (iii) names of members of a joint work site health and safety committee,*
 - (iv) the recorded minutes of a meeting of a joint work site health and safety committee meeting, or*
 - (v) codes of practice;*

(i) in clause (u) by striking out “or” at the end of subclause (iv), by adding “or” at the end of subclause (v) and by adding the following after subclause (v):

(vi) material safety data sheets in respect of controlled products;

13 Section 32 is amended

(a) in subsection (1)

(i) in clause (a)(i)

(A) by striking out “\$15 000” and substituting “\$150 000”;

(B) by striking out “\$1000” and substituting “\$10 000”;

(ii) in clause (b)(i)

(A) by striking out “\$30 000” and substituting “\$300 000”;

(B) by striking out “\$2000” and substituting “\$20 000”;

(b) in subsection (2) by striking out “\$15 000” and substituting “\$300 000”;

(c) by repealing subsection (3).

14 The Occupational Health and Safety Amendment Act, 1983, chapter 39 of the Statutes of Alberta, 1983, is amended in section 8 as to section 10.1 by striking out “is about to begin” and substituting “intends to begin”.

15(1) Sections 2, 7 and 12(d) to (i) come into force on October 31, 1988.

(2) Sections 3 to 6, 8 to 11, 12(a) to (c) and 13 come into force on Proclamation.

13 Section 32 presently reads:

32(1) A person who contravenes this Act or the regulations or fails to comply with an order made under this Act or the regulations or an acceptance issued under this Act is guilty of an offence and liable

(a) for a first offence,

(i) to a fine of not more than \$15 000 and in the case of a continuing offence, to a further fine of not more than \$1000 for each day during which the offence continues after the first day or part of a day, or

(ii) imprisonment for a term not exceeding 6 months,

or to both fines and imprisonment, and

(b) for a 2nd or subsequent offence,

(i) to a fine of not more than \$30 000 and in the case of a continuing offence, to a further fine of not more than \$2000 for each day or part of a day during which the offence continues after the first day, or

(ii) to imprisonment for a term not exceeding 12 months,

or to both fines and imprisonment.

(2) Notwithstanding subsection (1), a person who fails to comply with an order made under section 8 or as varied under section 11 is guilty of an offence and liable to a fine of not more than \$15 000 or imprisonment for a term not exceeding 12 months or to both fine and imprisonment.

(2.1) A person who knowingly makes any false statement or knowingly gives false information to an officer or a peace officer engaged in an inspection or investigation under section 6 or 14 is guilty of an offence and liable to a fine of not more than \$500 or to imprisonment for a term not exceeding 6 months or to both fine and imprisonment.

(3) A prosecution shall not be commenced under this Act without the consent of the Attorney General.

(4) A prosecution under this Act may be commenced within one year after the commission of the alleged offence, but not afterward.

14 Section 8 of the Occupational Health and Safety Amendment Act, 1983 presently reads:

8 The following is added after section 10:

10.1 A person who is about to begin a new project may be required to file notice in accordance with the regulations.

15 Coming into force.