

## BILL 37

2002

### OCCUPATIONAL HEALTH AND SAFETY AMENDMENT ACT, 2002

(Assented to \_\_\_\_\_, 2002)

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

#### Amends RSA 2000 cO-2

**1 The *Occupational Health and Safety Act* is amended by this Act.**

#### **2 Section 1 is amended**

**(a) by renumbering clause (a) as clause (a.1) and adding the following before clause (a.1):**

(a) “adopted code” means each code made under section 40.1(1) and adopted under section 40.1(2), including any secondary code adopted or incorporated as referred to in section 40.1(3), that is relevant to the circumstances in question;

**(b) by adding the following after clause (aa):**

(aa.1) “the regulations” means the regulations under section 40(1);

#### **3 Section 2 is amended**

**(a) in subsection (1)(b) by striking out “and the regulations” and substituting “, the regulations and the adopted code”;**

- (b) in subsection (4) by striking out “or the regulations” and substituting “, the regulations and the adopted code”;**
- (c) in subsection (5) by striking out “and the regulations” and substituting “, the regulations and the adopted code”.**

**4 Section 7 is amended**

- (a) in clause (a) by striking out “and the regulations” and substituting “, the regulations and the adopted codes and potential changes to them,”;**
- (b) in clause (c) by striking out “and the regulations” and substituting “, the regulations and the adopted codes”.**

**5 Section 9(2) is repealed and the following is substituted:**

(2) When an officer is of the opinion that a person is not complying with this Act, the regulations or the adopted code, the officer may in writing order that person to take such measures, within the time limits specified in the order, as the officer considers necessary to ensure such compliance and specifies in the order.

**6 Section 11 is amended by striking out “the standards prescribed or adopted by the regulations” wherever it occurs and substituting “the adopted code”.**

**7 Section 12 is amended**

- (a) in subsections (1) and (2) by striking out “standards prescribed or adopted by the regulations” and substituting “adopted code”;**
- (b) in subsection (1) by striking out “the standards are” and substituting “that code is”;**

- (c) **in subsection (3) by striking out** “standards prescribed or adopted by the regulations” **and substituting** “the adopted code”.

**8 Section 23(1) is amended by striking out** “or the regulations” **and substituting** “, the regulations or the adopted code”.

**9 The following is added after section 28:**

**Publication of information about employers**

**28.1** The Minister may, in order to enhance the protection of workers and the prevention of work site injuries by encouraging good and discouraging bad work site safety records,

- (a) establish indices and measurements of work site injury prevention,
- (b) maintain a register consisting of the names of employers and their performance, as determined by the Minister, in relation to those indices and measurements,
- (c) publish, or authorize a department or agency of the Government or any other entity to publish, the information contained in that register, and
- (d) collect any information needed for that register from another public body that provides the information to the Minister.

**10 Section 30 is amended**

- (a) **in clauses (a) and (c) by striking out** “regulations” **and substituting** “adopted code”;
- (b) **in clause (b) by striking out** “regulation” **and substituting** “the adopted code”.

**11 Section 31(1)(d) is amended by striking out** “prescribed by the regulations” **and substituting** “provided for by the adopted code”.

**12 Section 32 is amended by striking out “by regulation” and substituting “by or under the regulations or the adopted code”.**

**13 Section 33 is amended**

**(a) in subsection (1)(b) by striking out “regulation” and substituting “the regulations or the adopted code”;**

**(b) in subsection (2)**

**(i) by adding “or the adopted code” after “of the regulations”;**

**(ii) by striking out “or the regulations” and substituting “, the regulations or the adopted code”.**

**14 Section 34 is amended**

**(a) in subsection (1) by striking out “regulation” and substituting “the regulations or the adopted code”;**

**(b) in subsection (3) by striking out “or the regulations” and substituting “, the regulations or the adopted code”.**

**15 Section 36 is amended by striking out “or an order given under this Act” and substituting “, the adopted code or an order given under this Act or the regulations”.**

**16 Section 40 is repealed and the following is substituted:**

**Lieutenant Governor in Council regulations**

**40(1)** The Lieutenant Governor in Council may make regulations

(a) establishing general health and safety rules for or in connection with occupations and work sites, including

- (i) reporting, medical and health requirements, and
  - (ii) the making available of notices issued by a Director and of orders made under, and other information and documents required by, this Act or the regulations;
- (b) providing for any matter or thing which by this Act may or is to be provided for by the regulations;
- (c) respecting the establishment, composition and operation of a board dealing with first aid training;
- (d) respecting licences and licensing, including qualifications to obtain and hold licences and the maintenance of a registry of licensees;
- (e) specifying which work sites are mines or quarries for the purposes of this Act;
- (f) respecting fees
  - (i) to be paid by the Government to physicians for services performed, and
  - (ii) for licences and for services and materials provided under this Act, the regulations and the adopted codes;
- (g) respecting acceptances referred to in section 34;
- (h) establishing and otherwise respecting a system of fixed fines or penalties for contraventions of this Act, the regulations and any adopted code, including mechanisms for administering and enforcing that system and the disposition of the fines or penalties collected under the system;
- (i) authorizing the making of orders relating to any matters falling within the scope of clauses (a), (d) or (g) or section 40.1(1)(a);
- (j) enabling any particular subject-matter covered by clause (a) to be dealt with by an adopted code.

(2) If regulations are made under subsection (1)(h), those regulations operate notwithstanding anything in the *Financial Administration Act*.

**Ministerial orders and codes**

**40.1(1)** The Council may make a code of rules (in this section referred to as an “OHS code”)

- (a) respecting specific health and safety matters for or in connection with occupations and work sites, including
  - (i) reporting requirements and the maintenance and preservation of documents reported,
  - (ii) medical and health requirements,
  - (iii) joint work site health and safety committees,
  - (iv) the making available of codes of practice and other information and documents required by an adopted code, and
  - (v) the instruction, supervision and qualifications of specified persons,
- (b) providing for the prevalence of specified provisions of an adopted code over other specified provisions of an adopted code, and
- (c) providing for any matter or thing which by this Act or the regulations may or is to be provided for by an adopted code.

(2) The Minister may, after consulting with such representatives of employers and of workers in the industries that will be affected by the code as the Minister considers appropriate, make an order adopting any code that is lawfully made by the Council under subsection (1).

(3) An OHS code may itself adopt or incorporate another specific code (in this section referred to as a “secondary code”) or part of a secondary code, as that secondary code or part exists as at a particular time, dealing with health and safety matters that are within the Council’s jurisdiction under subsection (1).

(4) To avoid doubt, an adopted code is an enactment for the purposes of construing the *Provincial Offences Procedure Act*.

(5) The Minister shall ensure that each adopted code is adequately published in such form as the Minister considers will make it reasonably available, at no expense or at reasonable expense, to all those likely to be affected by it.

(6) To avoid doubt, the *Interpretation Act* applies with respect to an OHS code.

(7) Except to the extent that an OHS code otherwise provides, where there is any conflict between any provisions in an OHS code and any provisions in a secondary code, the former prevail against the latter.

**Provisions affecting the regulations and adopted codes**

**40.2(1)** Any provision of the regulations or an adopted code may be made to apply generally or to a particular occupation, work site, prime contractor, owner, employer, contractor, supplier or worker or any class of any such category.

(2) Except to the extent that the regulations otherwise provide, where there is any conflict between any provisions in the regulations and any provisions in an adopted code, the former prevail against the latter.

**17 Section 41 is amended**

**(a) in subsection (1)**

(i) **by striking out** “contravenes this Act or the regulations” **and substituting** “contravenes this Act, the regulations or an adopted code”;

(ii) **in clause (a)(i)**

(A) **by striking out** “\$150 000” **and substituting** “\$500 000”;

(B) **by striking out** “\$10 000” **and substituting** “\$30 000”;

(iii) **in clause (b)(i)**

**(A) by striking out “\$300 000” and substituting “\$1 000 000”;**

**(B) by striking out “\$20 000” and substituting “\$60 000”;**

**(b) in subsection (2) by striking out “\$300 000” and substituting “\$1 000 000”;**

**(c) in subsection (3) by striking out “\$500” and substituting “\$1000”.**

**18 The following is added after section 41:**

**Additional powers of court to make directions**

**41.1(1)** Where a person is convicted of an offence against this Act, in addition or as an alternative to taking any other action provided for in this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order directing the person

- (a) to establish or to revise
  - (i) the policy referred to in section 32(a) and arrangements referred to in section 32(b), or
  - (ii) a training or educational program regarding the health or safety of workers at the work site,
- (b) to take specific action to improve health and safety at work sites, or
- (c) to take any other action specified in the regulations.

**(2)** The order may contain any substance or conditions that the court considers appropriate.

**19 The following is added after section 46:**

**Transitional – regulations**

**47(1)** Notwithstanding section 16 of the *Occupational Health and Safety Amendment Act, 2002* but subject to anything to the contrary in the regulations under section 40(1), any regulation under this Act, as that regulation existed immediately before the



commencement of that section, continues in force until it is repealed under this section, and that regulation may be repealed by

- (a) an order under section 40.1 dealing with code provisions that deal with subject-matters dealt with by that regulation, or
- (b) the regulations,

as the case may be.

(2) Notwithstanding section 1(aa.1), a regulation continued by subsection (1), while still in force, is included in the term “the regulations” so far as it is not inconsistent with the regulations under section 40(1).

### **Explanatory Notes**

**1** Amends chapter O-2 of the Revised Statutes of Alberta 2000.

**2** New definitions.

**3** Section 2 presently reads in part:

*2(1) Every employer shall ensure, as far as it is reasonably practicable for the employer to do so,*

*(a) the health and safety of*

*(i) workers engaged in the work of that employer, and*

*(ii) those workers not engaged in the work of that employer but present at the work site at which that work is being carried out, and*

*(b) that the workers engaged in the work of that employer are aware of their responsibilities and duties under this Act and the regulations.*

*(4) Every supplier shall ensure that any tool, appliance, equipment, designated substance or hazardous material that the supplier supplies complies with this Act or the regulations.*

*(5) Every contractor who directs the activities of an employer involved in work at a work site shall ensure, as far as it is reasonably practicable to do so, that the employer complies with this Act and the regulations in respect of that work site.*

**4** Section 7 presently reads:

*7 The Council shall*

- (a) advise the Minister on matters concerning this Act and the regulations and on matters concerning the health and safety of workers;*
- (b) hear appeals in accordance with this Act;*
- (c) perform any duties and functions assigned to it by the Minister with respect to the administration of this Act and the regulations.*

**5** Section 9(2) presently reads:

*(2) When an officer is of the opinion that this Act or the regulations are not being complied with, the officer may in writing order the person who, in the officer's opinion, is not complying with the Act or the regulations to take measures as specified in the order that are, in the opinion of the officer, necessary to ensure that this Act and the regulations will be complied with, within the time limits specified in the order.*

**6** Section 11 presently reads:

*11(1) When an officer is of the opinion that a tool, appliance or equipment being used or that may be used by a worker*

*(a) is not in safe operating condition, or*

*(b) does not comply with the standards prescribed or adopted by the regulations,*

*the officer may in writing order the worker to stop using or to refrain from using that tool, appliance or equipment.*

*(2) When an officer is of the opinion that a supplier is supplying a tool, appliance or equipment that*

*(a) is not in safe operating condition, or*

*(b) does not comply with the standards prescribed or adopted by the regulations,*

*the officer may in writing order the supplier to stop supplying that tool, appliance or equipment for use by any worker.*

*(3) If an officer makes an order under this section, the officer may rescind that order on being satisfied that the tool, appliance or equipment in respect of which the order was made*

*(a) has been repaired or modified so that it is in safe operating condition, or*

*(b) has been made to comply with the standards prescribed or adopted by the regulations,*

*as the case may be.*

**7** Section 12 presently reads:

*12(1) When an officer is of the opinion that the storage, handling or use of a substance or material does not comply with the standards prescribed or adopted by the regulations, the officer may in writing order the person responsible for the storage,*

*handling or use of the substance or material to take the measures specified in the order that are, in the opinion of the officer, necessary to ensure that the standards are complied with.*

*(2) When an officer is of the opinion that a supplier is supplying any substance or material that does not comply with the standards prescribed or adopted by the regulations, the officer may in writing order the supplier to stop supplying that substance or material.*

*(3) If an officer makes an order under this section, the officer may in writing rescind that order on being satisfied that the material or substance is being supplied, stored, handled or used in compliance with standards prescribed or adopted by the regulations.*

**8** Section 23(1) presently reads:

*23(1) A physician who performs or supervises a medical examination of a worker as required under this Act or the regulations*

*shall, on the request of a Director of Medical Services, furnish any medical reports that a Director may require.*

**9** Publication of information about employers.

**10** Section 30 presently reads:

*30 If a controlled product is used, stored, handled or manufactured at a work site, the prime contractor or, if there is no prime contractor, the contractor or 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.*

**11** Section 31(1) presently reads in part:

*31(1) The Minister may, by order, require that there be established at any work site a joint work site health and safety committee that shall*

- (d) *carry out those duties and functions prescribed by the regulations.*

**12** Section 32 presently reads in part:

*32 A prime contractor, contractor or employer, if required by regulation, shall*

**13** Section 33 presently reads:

*33(1) A prime contractor, contractor or employer involved in work at a work site may be required*

- (a) *by a written order of a Director, or*
- (b) *by regulation*

*to establish a code of practice and to supply copies of it to a Director.*

*(2) A code of practice shall include practical guidance on the requirements of the regulations applicable to the work site, safe working procedures in respect of the work site and other matters as required by a Director or the regulations.*

**14** Section 34 presently reads in part:

*34(1) A Director may, in accordance with the regulations, issue in writing an acceptance to a prime contractor, contractor or employer if, in the Director's opinion, an alternative tool, appliance, equipment, work process, first aid service or first aid supplies or equipment at a work site provides equal or greater protection than that provided for by regulation to persons affected by the tool, appliance, equipment, work process, first aid service or first aid supplies or equipment.*

*(3) An acceptance is in effect only during the period prescribed in it and, notwithstanding anything in this Act or the regulations, during that period the terms, conditions or requirements set out in it apply with respect to the tool, appliance, equipment or work process at the work site to which the acceptance applies.*

**15** Section 36 presently reads:

*36 No person shall dismiss or take any other disciplinary action against a worker by reason of that worker acting in compliance with this Act, the regulations or an order given under this Act.*

**16** Lieutenant Governor in Council regulations, Ministerial orders and codes.

**17** Section 41 presently reads:

*41(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 \$150 000 and in the case of a continuing offence, to a further fine of not more than \$10 000 for each day during which the offence continues after the first day or part of a day, or*

(ii) *to 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 \$300 000 and in the case of a continuing offence, to a further fine of not more than \$20 000 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 10 or as varied under section 16 is guilty of an offence and liable to a fine of not more than \$300 000 or imprisonment for a term not exceeding 12 months or to both fine and imprisonment.*

(3) *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 8 or 19 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.*

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

**18** Additional powers of court to make directions.

**19** Transitional - regulations.