Management of Occupational Health and Safety (Canadian) 7th edition Kelloway Solutions Manual

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CHAPTER 2
Legislative Framework

ESSENTIAL OUTCOMES

After completing the lesson on this chapter, if nothing else, students should be able to identify the origins and sources of the laws, rules, and procedures governing occupational health and safety in Canada, and distinguish between the various roles, duties, and responsibilities of the major stakeholders involved in health and safety governance.

LEARNING OUTCOMES

After completing this chapter, students should be able to:

- articulate the three health and safety rights granted to workers in Canada
- describe the regulatory framework surrounding occupational health and safety
- outline the duties of the major stakeholders under occupational health and safety legislation
- discuss the nature of and limits placed on work refusals and work stoppages
- describe the structure and role of joint health and safety committees
- discuss WHMIS 2015 as it applies to the right to know about chemical hazards in the workplace
- explain how occupational health and safety fits into the Criminal Code
- express how environment and transportation of dangerous goods legislation interacts with occupational health and safety concerns

KEY CONCEPTS

- Occupational health and safety in Canada is regulated both federally and provincially, with each jurisdiction responsible for creating and enforcing a variety of acts, regulations, guidelines, standards, and codes. The majority of workers in Canada are regulated by provincial or territorial legislation. These pieces of legislation protect the rights of Canadian workers, namely the right to refuse dangerous work without penalty; the right to participate in identifying and correcting health and safety problems; and the right to know about hazards in the workplace.
- ***Acts*** are pieces of legislation (laws) enacted by a specific level of government (federal, provincial, or territorial); **regulations** explain how the general intent of the act is to be applied in specific circumstances; **guidelines and policies** set out more specific rules for application that are not legally enforceable unless referred to in a regulation or act; and **standards and codes** provide practical guidance on the implementation of occupational health and safety practices. For instance, a code or standard may outline recognized best practices to manage a specific hazard, such as the maintenance and operation of a crane or another type of heavy equipment. Codes and standards are not necessarily enforceable by law, unless they are explicitly identified as required within the OH&S Act
- All Canadian occupational health and safety legislation includes the elements of the act itself; descriptors of who has the power to enforce the act; statements outlining the rights of

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workers to refuse to do unsafe work and to be protected from reprisals for doing so; and a description of the duties and responsibilities assigned to employers and other stakeholders.

- Occupational health and safety legislation in Canada is heavily based on the concept that each of the stakeholders (e.g., employers, owners, contractors, supervisors, and workers) has significant responsibility for ensuring a safe workplace and for taking a proactive role in the identification of hazardous situations and the prevention of workplace incidents. The acts articulate general and prescribed duties for the stakeholders. The establishment and use of joint health and safety committees illustrates how the joint responsibility concept is put into force. The right to know, the right to participate, and the right to refuse are the three cornerstones of the system.
- OH&S Notebook 2.1 describes each Canadian jurisdictions' occupational health and safety legislation as follows:

Jurisdiction	Legislation	Government Agency Responsible
Canada (Federal)	Canada Labour Code, Regulations under Part II	Workplace Safety, Labour Program, Employment & Social Development Canada, Government of Canada
Alberta	Occupational Health and Safety Act	Occupational Health & Safety, Alberta Labour
British Columbia	Workers' Compensation Act, Occupational Health & Safety Regulations	WorkSafeBC
Manitoba	Workplace Safety and Health Act	SAFE Manitoba
New Brunswick	Occupational Health and Safety Act	WorkSafeNB
Newfoundland and Labrador	Occupational Health and Safety Act	Occupational Health & Safety Branch, ServiceNL
Northwest Territories and Nunavut	Safety Act	Workers' Safety and Compensation Commission of the Northwest Territories and Nunavut
Nova Scotia	Occupational Health and Safety Act	Occupational Health & Safety Division, Nova Scotia Labour & Advanced Education
Ontario	Occupational Health and Safety Act	Occupational Health & Safety Branch, Ministry of Labour
Prince Edward Island	Occupational Health and Safety Act	Safe Workplaces, Workers' Compensation Board of PEI

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Jurisdiction	Legislation	Government Agency Responsible
Quebec	Act Respecting Occupational Health and Safety	Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST)
Saskatchewan	Saskatchewan Employment Act, Occupational Health and Safety Regulations	WorkSafe Saskatchewan
Yukon	Occupational Health and Safety Act	Yukon Workers' Compensation Health and Safety Board

- Every jurisdiction in Canada protects workers' right to refuse dangerous work without fear of reprisal. When workers have a reasonable cause to believe that a task or activity would cause danger to themselves or others they can refuse to engage in the work following established procedures. There are some limitations on the right to refuse, particularly when the task or activity is a normal condition of employment, or if the worker, by his or her refusal, places another person's safety in jeopardy.
- The Workplace Hazardous Materials Information System (WHMIS) is designed to protect workers by providing them with the *right to know* about potentially hazardous materials with which they may come into contact, and with information to assist with the safe handling, use, and storage of these materials. Recent updates for WHMIS 2015 incorporate elements of the Globally Harmonized System of Classification and Labelling of Chemicals (GHS). This update means some changes to the WHMIS framework, such as the introduction of some new classes of materials, but the program, which is being phased in over time until 2018, will ease global business interactions and trade.
- Changes to the Criminal Code of Canada, which became law in 2004, mean that company executives can now face criminal charges serious occupational health and safety violations and thus face fines and prison time.
- Federal, provincial, and territorial legislation also exists specifically for environmental concerns and the transportation of dangerous goods. These areas of legislation have many links to OH&S and practitioners in this area need to be aware of the scope and implications of all the relevant legislation.

STUDENT MOTIVATION

"Where do the laws and rules come from that help keep us safe at work?" That may not be a question many students will have considered, but virtually every student who has ever had a job will in one way or another have been impacted by the answer to this question. Perhaps the issue of workplace safety will be somewhat taken for granted by some students, who may have never paused to consider the mechanisms of legislation and the duties and responsibilities laid out therein. When this fundamental question is framed in such a way, students may be motivated to explore the answers a little more deeply. Further, students may be prompted to think about the issues more closely when prompted to consider the questions from a perspective of basic worker

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rights. They can imagine ways in which their rights to know, participate, and refuse can be facilitated and challenged in familiar workplaces.

BARRIERS TO LEARNING

The topic of legislation, laws, and acts may seem quite "dry" to some students, and they may have difficulty feeling any sort of personal connection or relation to them. Others may have taken courses in civics, political science, or other subjects where the process of creating laws and governance is studied, and perhaps found the subject not all that interesting to them. Finally, the mix of jurisdictional authority for occupational health and safety legislation between the federal and provincial/territorial governments may confuse students.

ENGAGEMENT STRATEGIES AND LESSON PLAN

1. Engaging Students at the Outset

> **Learning Objective:** *At the completion of this activity students will have gained an appreciation for the consequences of workplace incidents, and will have considered the roles and responsibilities of employers, supervisors, and workers in their prevention.*

To introduce students to the key concepts in this chapter, show the video *The Supervisor* (available for download from WorkSafe BC—see Additional Resources later in the chapter). This video puts a very human face on the topic of responsibilities for workplace safety, which may serve to engage some learners by helping them see and appreciate the need for laws, rules, and policies designed to protect workers from serious injury or death. At the conclusion of the video, give students the opportunity to debrief in pairs or small groups before facilitating a class discussion.

2. Lesson Engagement Strategies

a. Learning Objective: *At the completion of this activity, students will have been able to identify the major stakeholders in occupational health and safety, and list their primary duties and responsibilities for OH&S.*

Provide students with a **blank graphical organizer** such as a **radial list** (available in "SmartArt" in MS Word) with six smaller circles radiating out from the central circle. Either individually, in pairs, or in small groups, have students label the graphic organizer beginning with Duties and Responsibilities of the Major Stakeholders in the primary circle, and various stakeholders (described on pages 34–36) in the smaller circles. Have them continue to add the specific duties and responsibilities listed in the chapter next to each of the secondary circles. Students may work collaboratively, but have each student label and complete his/her own organizer. After this, review the organizer with the students against the material in the chapter to ensure completeness. Encourage students to retain the graphic organizer to use as a study and review tool. This activity can be used to supplement or replace the activity described in Section D, *Duties and Responsibilities of the Major Players*, in the Lesson Plan Notes and Lecture Outline.

b. Learning Objective: *At the completion of this activity, students will have reviewed and discussed the issue of work refusals and the laws and policies related to the issue from a variety of perspectives.*

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Using material from the Ontario Ministry of Labour titled **Part V: Right to Refuse or to Stop Work Where Health and Safety in Danger** (available on the Ontario Ministry of Labour website—see link in the **Additional Resources** section), divide students into similar-sized groups and assign each group a section of the material to review, synthesize, and present to the other groups. Suggested allocation of the material is to have one or two groups work with the question-and-answer section (divide the questions in two); another group work with the section dealing with the typical work refusal process (diagram); another group work with the section on the right to stop work; and the final group work with the section dealing with unilateral work stoppage. In a large class, consider having more than one group tackle each section, but have all groups present their summaries with a focus on adding to the understanding of the information being summarized. Have each group record its summary on flip chart paper to aid in the presentations.

c. **Learning Objective**: *At the completion of this activity, students will be able to discuss the application of the Criminal Code of Canada in OH&S cases. This increased knowledge will enable students' understanding of this legislation and how it relates to the enforcement of OH&S legislation. In sourcing their own information and discussing their findings with the instructor and classmates, students will also gain increased appreciation for the importance of source integrity.*

There have now been numerous criminal charges for OH&S offences, including Metron Construction, Transpave, and Pasquale Scrocca. That said, one criticism of the legislation is that there are relatively few charges laid under this law and even fewer convictions. Working in either small groups of three or four students (if there is individual Internet access) or as a class, complete the following table for several cases in which charges were laid under the Westray legislation.

Case Name	Short Summary of Case	Criminal Charges?	Who was charged?	Other Charges (OH&S, environmental, dangerous goods etc.)	Convicted?	Punishment (Fine/Jail time)

In completing such a table for even one or two cases, students will be prompted to think about how the Westray legislations is used in conjunction with other areas of legislation, the nature of the cases where criminal charges are laid, and the types of sentences and fines that are applied. A discussion of why the legislation is not often applied may follow.

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3. Lesson Plan Notes and Lecture Outline

A. Introduction—Overview of the Regulatory Framework for Occupational Health and Safety

Refer to Occupational Health and Safety Notebook 2.1 to provide students with an overview of the regulatory framework for occupational health and safety in federal, provincial, and territorial jurisdictions. Use PowerPoint slides and access websites to define and give examples of acts, regulations, guidelines and policies, standards, and codes. Discuss the scope and common elements (list) that are included in all Canadian occupational health and safety legislation using PowerPoint slides.

B. Canadian Government Departments Responsible for Occupational Health and Safety

Ask students what act, regulation, and enforcing bodies are responsible for occupational health and safety legislation in their jurisdiction. Referring to the OH&S Notebook 2.1, access your provincial or territorial jurisdiction's website (e.g., BC Workers Compensation Act, OH&S Regulation, WorkSafe BC [http://www.worksafebc.com]). Provide students with an overview of the administrative structure of the act and regulations as these relate to enforcement, education, and compensation. You will want to refer to the index and users' guides so that students become familiar with how to find the legal requirements for various workplaces. Government departments in the different jurisdictions have resources, such as OH&S Act interpretation guides that can be accessed online.

C. Work Refusals and Workers and Employers Rights

(See Lesson Engagement Strategy b.)

D. Duties and Responsibilities of the Major Players

Divide students into six groups, representing the major players in occupational health and safety listed below. They can use their text and other publications (printed or online) on OH&S legislation in their jurisdiction ("Safety on the Job Is Everyone's Business: The Responsibilities of Employers, Supervisors and Workers" [https://www.worksafebc.com/en/forms-resources#sort=relevancy&f:language-facet=[English]]) to discuss and then present to the class the duties and responsibilities of the following:

- Employers/Owners/HRMs
- Employees
- Suppliers
- Joint Health and Safety Committee / Worker Representatives
- Supervisors
- Contractors/Subcontractors

Refer to the end-of-chapter Discussion Question 5, and Using the Internet Question 1.

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It is the employer's legal obligation to ensure the workplace is safe. Employers are responsible for ensuring the health and safety of all workers and of any other workers at a workplace where the employer's work is being carried out. This involves establishing an occupational health and safety program (described below), providing a healthy and safe working environment, and providing instruction and training to supervisors and workers. Business owners are responsible for providing and maintaining the land and premises being used as a workplace in a manner that ensures the health and safety of anyone at or near the workplace.

According to the Workers' Compensation Act of BC, an employer must meet the standard of due diligence. To meet the standard of due diligence an employer must take all reasonable care to protect the well-being of workers. An ongoing occupational health and safety program that controls specific hazards in the workplace forms the basis of due diligence. An employer that has all the occupational health and safety program elements required by the regulation, in effect and working well, is acting with due diligence. The minimum occupational health and safety program elements are outlined below:

- Statement of Aims and Responsibilities
- Inspection of Premises, Equipment, and Work
- Written Instructions
- Management Safety Committee Meetings
- Investigation of Accidents/Incidents
- Maintenance of Records and Statistics
- Instruction and Supervision of Workers

E. Workplace Hazardous Materials Information System (WHMIS)

Ask students if they have received training in the Workplace Hazardous Materials Information System. Ask them for details about what they learned, as specific information is gathered from the student's experiences. Provide an overview of brief WHMIS legislation. WHMIS is a nationwide program that provides information about the use of hazardous materials (controlled products) in the workplace. Labels, Safety Data Sheets, and worker education and training are the three communication elements of WHMIS. Labels on controlled products alert workers to potentially hazardous products. Safety Data Sheets provide workers with detailed hazardous ingredients, as well as information on the safe handling of the product. Education and training provides employees with the information and practices that they need to work safely with controlled products. Recently changes have been made to the WHMIS program. WHMIS 2015 incorporates elements of the GHS to ease international business and trade. Tell students that the details of WHMIS 2015 will be covered in Chapter 6.

F. Corporate Liability

Provide an overview of Bill C-45, the "Westray Legislation." Bill C-45, which went into effect on November 7, 2003, is an act that amended the Criminal Code and established a duty in criminal law for organizations to protect the health and safety of everyone in the workplace. Have students form small groups to discuss the following question: "What impact do you think this legislation is having on organizations and HRMs?"

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Bill C-45 came about because OH&S laws had not prevented the Westray Mine Tragedy (during which 26 coal miners lost their lives in 1992) had not punished those guilty for the disaster (owners and managers).

This was a weakness in the legal system. It was the failure of the organization to put health and safety before company profits and short-term economic gain and of a management style and culture that emphasized production over safety. The following outlines the impact of this new law:

- It states that "the employer must take reasonable steps to prevent bodily harm to any person arising out of work" (217.1).
- It proposes severe penalties of up to 10 years imprisonment for bodily harm and life imprisonment for death if an employer fails to protect the H&S of the worker.
- It broadens the scope of who is responsible for worker OH&S to all levels of management and everyone else who directs the work of others.
- Organizations (i.e., owners, senior officers, directors, and managers) can be charged with criminal negligence if they fail to maintain an appropriate standard of OH&S in the workplace.
- It broadens all legislation to address (ensure protection) any current or unresolved workplace health problems (not just disasters and deaths), which can range from second-hand smoke to stress. Employers must not expose workers to the risk of illness, disease, or death.
- It supports unions' historical fight for worker health and safety and their raising of workplace OH&S concerns (visit United Steel Workers, http://www.uswa.ca).
- Training was not provided prior to the Westray disaster. This new legislation supports the importance of OH&S training, which is emphasized in all OH&S jurisdictions.
- It supports provincial or territorial and federal legislation requiring employer due diligence through the implementation of all the elements of an OH&S program. Due diligence requires a business to foresee all unsafe conditions or acts, and requires it to take precautions to prevent accidents that can reasonably be anticipated. An ongoing OH&S Program that controls specific hazards in the workplace forms the basis of due diligence.
- It supports the importance of the strategic management of OH&S (education, legislative compliance, integration with other human resource functions, cost containment, safety leadership and culture, and managing change).

G. Federal and Provincial or Territorial Statutes Relating to Environmental or OH&S Management

Refer to OH&S Notebook 2.4 and provide students with an overview of the federal and provincial or territorial statutes relating to environmental or OH&S management. Describe the purpose and basic provisions of the transportation of dangerous goods acts. Engage students in a discussion about the differences between the responsibilities assigned to companies under occupational health and safety legislation and those assigned under environmental legislation.

Occupational health and safety legislation states that employers are responsible for ensuring the health and safety of all workers and any other workers at a workplace where the employer's work is being carried out. They are also responsible for providing and maintaining the land and premises being used as a workplace in a manner that ensures the health and safety of anyone at

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or near the workplace. Environmental legislation states that employers must take all reasonable care to protect the environment and the public's health. Corporations are criminally liable if they pollute the natural environment. Environmental legislation affects the environment, employees, and the public.

ASSESSMENT TOOLS

To quickly assess student learning against the chapter learning outcomes, at the end of the class:

- Ask students (without referring to their notes) to define an **act**, a **regulation**, **guidelines and policies**, and **standards and codes.**
- Call on students, assigning them a stakeholder role (e.g., supervisor), and ask them to briefly outline one or more of their responsibilities for occupational health and safety (call on other students to help elaborate, expand, or clarify as needed). Continue for each of the stakeholder groups (employers, owners, and contractors; supervisors; and workers).
- Ask students to briefly describe the purpose and function of joint health and safety committees.

REFLECTIONS ON TEACHING

Good teaching requires ongoing self-assessment and reflection. At the completion of this lesson, you may find it helpful to reflect on the following, and consider whether you want or need to make any adjustments for subsequent lessons.

- What worked in this lesson? What didn't?
- Were students engaged? Were they focused or did they go off on tangents?
- Did I take steps to adequately assess student learning?
- Did my assessments suggest that they understood the key concepts?
- What (if anything) should I do differently next time?
- How can I gather student feedback?
- How can I use this feedback for continuous improvement of my teaching?

ADDITIONAL RESOURCES

Weblinks

- Ontario Ministry of Labour website: *Part V: Right to Refuse or to Stop Work Where Health and Safety in Danger,* http://www.labour.gov.on.ca/english/hs/pubs/ohsa/ohsag_part5.php

Videos

- *WorkSafeBC.* "The Supervisor." This 15-minute documentary-drama examines a supervisor's responsibility for workplace health and safety. It depicts the emotional, legal, and financial consequences of a fictionalized workplace accident that results in the death of a young worker (2004). The video can be accessed from https://www.worksafebc.com/en/resources/health-safety/videos/the-

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supervisor?lang=en&origin=s&returnurl=https%3A%2F%2Fwww.worksafebc.com%2Fen%2Fforms-resources%23q%3Dthe%2520supervisor%26sort%3Drelevancy%26f%3Atopic-facet%3D%5BHealth%2520%2526%2520Safety%5D%26f%3Alanguage-facet%3D%5BEnglish%5D&highlight=the+supervisor

- A list of other resources can be accessed at WorkSafeBC: https://www.worksafebc.com/en/forms-resources#sort=relevancy&f:language-facet=[English]

SUGGESTED ANSWERS TO CASES AND EXERCISES

Discussion Questions

1. What are the three fundamental workers' rights that underlie most health and safety legislation?

Answer:

1. The right to refuse dangerous work without penalty.
2. The right to participate in identifying and correcting health and safety problems.
3. The right to know about hazards in the workplace.

2. What is the most fundamental general duty provision in occupational health and safety legislation across Canada? How do the general and prescribed duties in the legislation reflect the internal responsibility system?

Answer: The general duty provision requiring employers to take ***every reasonable precaution*** to ***ensure*** employee safety is represented in health and safety acts across Canada. It is the fundamental general duty provision. Both general and prescribed duty provisions address both the shared and specific duties that all stakeholders have to keep workplaces safe. In outlining these duties across groups of stakeholders, the legislation illustrates how safety is a shared responsibility as outlined in the Internal Responsibility System.

3. Considering the health and safety legislation: (A) Provide an example of a situation in which a worker could reasonably refuse work. (B) Describe a situation in which a worker could not refuse unsafe work.

Example Answer: (A) A tree-planting crew refusing to work in very hot conditions because their employer did not provide them adequate personal protection in the form of sunscreen and water is an example of a situation in which a worker could reasonably refuse work. (B) However that same crew could not refuse to plant trees on the basis of it being hard work or mentally unstimulating, as planting trees is part of the nature of the work.

Example answer: (A) A firefighter can refuse to engage in a training exercise due equipment checks that have not been properly completed. (B) That same firefighter cannot refuse to attend an emergency call to a house fire where individuals are trapped because the house is a known base for criminal activity, in doing so he or she would place others' lives at risk.

4. How does WHMIS reflect basic health and safety rights?

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Answer: WHMIS is the Workplace Hazardous Materials Information System, a nationwide program providing information about the use of hazardous materials (controlled products) in the workplace. Under WHMIS legislations employees must be provided with this training if they encounter hazardous products in their work. Thus, the WHMIS legislation enacts the Right to Know.

5. Describe the structure and role of joint health and safety committees. In your answer, reflect on how such committees enact the right to participate.

Answer: Legislative mandatory requirements for joint health and safety committees are outlined in the OH&S Notebook 2.3 and are expanded on in each jurisdiction's occupational health and safety legislation. Health and safety acts in some jurisdictions (British Columbia*, Manitoba, Ontario*, New Brunswick, Nova Scotia, Prince Edward Island, Yukon, and Northwest Territories/Nunavut) require a joint health and safety committee when 20 or more workers are regularly employed in the workplace or when ordered by the board. However, the jurisdictions with an asterisk have special provisions that can require a smaller organization to have a committee in place as a result of an order and/or when requested by the governing body. Ontario has additional provision for committees when designated substances are in use. Two jurisdictions, Newfoundland and Labrador and Saskatchewan, require a committee when there are 10 or more employees. Quebec's act permits the formation of health and safety committees when there are more than 20 employees. The committee is established by written notice by the certified association or 10 percent of the workers in the case of workplaces without certified associations. The CNESST also has the ability to require a committee in a Quebec workplace regardless of the number of workers. Alberta requires committees at the direction of the minister responsible for the Occupational Health and Safety Act.

Committees are made up of members that represent both the employer and the workers. The primary role of these committees is to provide a collaborative atmosphere where employers, managers, unions, and employees can work together to ensure the workplace is safe. Although employers are ultimately responsible for occupational health and safety programs, worker health and safety representatives and joint health and safety committees have the following duties and functions: to identify and evaluate unhealthy or unsafe situations; to identify and recommend solutions to health and safety problems or complaints; to promote safe work practices; to recommend ways to improve the health and safety program; to promote compliance with regulations; and to participate in inspections and accident investigations.

By having representation from both employers and employees, JHSCs enable workers' right to participate in OH&S.

Using the Internet

1. What legislation applies in your jurisdiction? Find the body responsible for occupational health and safety and review the legislation. What are the major provisions and their implications for employers? For employees? For human resource managers?

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Answer: Students will want to refer to OH&S Notebook 2.1to find their provincial, territorial, or federal jurisdiction website. Students should be able to describe the administrative structure of the act and regulations as it relates to enforcement, education, and compensation.

The scope of legislation differs in each Canadian jurisdiction. The following describes the major provisions and their implications for employers, owners, contractors, employees, human resource managers, and supervisors in British Columbia. Employers are responsible for ensuring the health and safety of all workers at a workplace where the employer's work is being carried out. This involves establishing an occupational health and safety program**,** providing a healthy and safe working environment, and providing instruction and training to supervisors and workers.

Business owners are responsible for providing and maintaining the land and premises being used as a workplace in a manner that ensures the health and safety of anyone at or near the workplace. They must ensure that employers and prime contractors at the workplace have all the information they need to identify, eliminate, or control occupational health and safety hazards. When work areas of two or more employers overlap, the owner of the site must coordinate health and safety activities. Contractors or subcontractors must be registered with WorkSafeBC.

Supervisors are responsible for ensuring the health and safety of all workers under their direct supervision. They must ensure that workers follow the requirements of the Act and Regulation and that they are aware of any health or safety hazards in the workplace**.** They must conduct regular staff safety meetings, workplace inspections, and incident investigations, correct unsafe acts and conditions**,** and ensure that workers are adequately trained and are qualified to safely perform their duties.

Workers are responsible for protecting their own health and safety as well as the health and safety of other people who may be affected by the work being done. They must learn and follow safe work procedures**,** use and maintain personal protective equipment as required**,** report hazards to their supervisor or employer**,** and participate in workplace inspections and incident investigations as required.

2. WHMIS training is widely available online. Using a search engine and key words such as "WHMIS online training," find a local provider of online WHMIS training.

Answer: You can have the students complete this exercise at home and then share their online WHMIS training websites and experiences with Internet-based learning with the other students in the class.

Exercises

1. Health and safety legislation can be crafted following different approaches. One approach is to force compliance through establishing standards, conducting rigorous inspections on a regular basis, and harshly punishing failures to meet the established standards. A second approach is to facilitate self-reliance by providing parties with the information and resources necessary to monitor and enhance health and safety in their workplaces. What are the relative merits of these two approaches? What advantages/disadvantages accrue under each system? What is the appropriate balance between enforcement and encouragement?

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Answer: Effective occupational health and safety needs to be part of the organization's culture. Culture is an organization's shared values and beliefs about the way employees think and act within the organization. The organization's beliefs and expectations concerning occupational health and safety strongly influence whether employees act safely or not. The goal is to have occupational health and safety as part of the business plan and for it to be a core value held by managers and employees at all levels.

An organization's culture is a reflection of its leaders, values, and vision. HRM practices (i.e., hiring, orientation, training, and performance evaluations) should support these organizational expectations. An organization's occupational health and safety culture is a mix of formalized rules, controls, autocratic decision-making, and enforcement at one end of the continuum and a mix of self-reliance, motivation, participatory decision making, and internalized commitment on the other end. Organizations are very diverse and are made up of a mixture of enforcement and self-control processes and practices.

Legislation and compliance may be needed when organizations and employees have limited understanding or commitment towards occupational health and safety. Legislation outlines what employers and employees are accountable for without moral buy-in. Self-monitoring builds employee ownership, initiative, and self-responsibility. The measure of occupational health and safety would be a delicate balance of compliance while embracing shared perceptions of the importance of safety. Dupont has received recognition as an organization that has taken ownership and responsibility for occupational health and safety.

OH&S in Action

As a human resources manager at an urban property management firm, you've noticed a trend that there are an increasing number of young workers on your pay roll. Some are students who are helping to cover their living costs by acting part-time as on-site superintendents in their apartment buildings, some are summer workers who are hired to cover additional outside maintenance and landscaping work in the summer, and others are new full-time, permanent hires brought on in a recent expansion of your company's holdings. You're concerned that you are seeing an increase in worksite injury incident claims. When you interview many of these new, young workers, you realize that they are often unaware of their workplace rights. Prepare a *briefing note* for your boss, the Director of Company Operations, outlining the basic worker rights, why it is important for workers to understand them, and how you might increase awareness of these rights among your entire workforce, including young, short-term, and part-time workers. (Hint: You can easily find details on the purpose and structure of a briefing note with an Internet search.)

Elements of Potential Answers: The nature of the briefing note (format, length, etc.) will depend on the types of instructions and resources you provide students. If you prefer that all follow a particular format, it is a good idea to provide them with a particular format or common resource to guide their work. Briefing notes are short and clear. They provide decision makers with the core information they will need to act on an issue. The purpose should be clearly stated. There should be a summary. The note should highlight the major considerations the decision maker needs to consider. These should be brought together in a conclusion, which may include recommendations.

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In this case, the briefing note might outline the extent and nature of the incident claims, the lack of awareness of rights in the interviews. The three basic rights (the right to refuse dangerous work without penalty; the right to participate in identifying and correcting health and safety problems; and the right to know about hazards in the workplace) should be identified. The imperative that the organization fulfill these rights can be emphasized. The exercise asked for ways to improve awareness and thus the note should include recommendations (e.g., safety orientation, poster awareness program, etc.).

Case Studies

Case Study 1: Workplace Tragedy

This is a high-risk work environment that involves high-risk occupational health and safety work practices. It is the employer's legal obligation to ensure that the workplace is safe. Employers are responsible for ensuring the health and safety of all workers and any other workers at a workplace where the employer's work is being carried out; this involves establishing an occupational health and safety program (described below), providing a healthy and safe working environment, and providing instruction and training to supervisors and workers. Business owners are responsible for providing and maintaining the land and premises being used as a workplace in a manner that ensures the health and safety of anyone at or near the workplace.

According to BC's Workers' Compensation Act, an employer must meet the standard of due diligence. To meet the standard of due diligence, an employer must take all reasonable care to protect the well-being of workers. An ongoing occupational health and safety program that controls specific hazards in the workplace forms the basis of due diligence. An employer that has all the occupational health and safety program elements required by the regulation in effect, and working well, is acting with due diligence. The minimum occupational health and safety program elements are outlined below:

- Statement of Aims and Responsibilities
- Inspection of Premises, Equipment, and Work
- Written Instructions
- Management and Safety Committee Meetings
- Investigation of Accidents/Incidents
- Maintenance of Records and Statistics
- Instruction and Supervision of Workers

The employer/HRM must promptly conduct an accident investigation (and also investigate past accidents and continue to investigate all incidents and near misses). These investigations will help determine why the accident (or incidents/near misses) happened so that the employer/HRM can ensure that these accidents will not occur in the future. An accident report needs to be completed that includes recommendations for corrective measures. Fatalities are rare, but incidents and near misses are very common. The employer allowed the accident-prone crane to continue to operate without taking any action to ensure the safety of the workers. The focus should have been on correcting the incidents and near misses so that lost time accidents, permanent disabilities, and fatalities do not occur. The employee failed to identify and correct the

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risks and hazards. This case illustrates the importance of leadership, communication, and business decisions that support workplace occupational health and safety. The employer/HRM must establish an occupational health and safety program, keeping in mind that an occupational health and safety program is more than a written document and must be part of employee behaviour (involvement and accountability). It must meet the standards of due diligence. Refer to the Canadian Centre for Occupational Health and Safety's fact sheet on due diligence at http://www.ccohs.ca/oshanswers/legisl/diligence.html.

Case Study 2: Work Refusal at Regional Hospital

Employees may refuse to carry out any task they believe is unduly hazardous to the health and safety of any person, in which case, they must inform the employer. The employer/HRM must immediately investigate and correct the situation without delay. The employer/HRM is required to develop and implement an exposure control plan to address the specific risks and hazards faced by workers in these work settings. Employees need to be educated and provided with specific information from specialists and experts concerning health and safety issues about their workplace. They need to be shown how to prevent unsafe conditions and provided with examples of safe work practices. Objective and immediate communication channels and staff forums need to be established where employees can talk about these concerns and what they feel uncomfortable about. All fears, concerns, social issues and discomfort, biases, and beliefs need to be dealt with until the employees feel safe. The critical issue in this situation is that the employees were afraid to enter their workplace. They believed that their workplace was unsafe, whether it was or was not safe. Unless the employer/HRM conducts a thorough investigation, educates the employees, and implements an exposure control plan in which the employees feel safe, the work refusal will continue. The organization may need to include controls that may not be necessary but make the employees feel safe. If a worker refuses to perform a task that he or she believes is unsafe, the employer can suggest another approach, but cannot discipline, reduce the worker's wages, change working hours, or suspend the worker. The regulation also provides the following rights to employees: job-protected leave, no penalties for emergency leave, and payment for those not working because of quarantine (WorkSafeBC Occupational Health and Safety Regulation: Section 3.12 to 3.13).

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ROLE PLAY

Kelloway, *Management of Occupational Health and Safety*

Seventh Canadian Edition

PLAYERS

Divide students into pairs:
Student A = Human Resources Practitioner
Student B = Grocery Store Supervisor

PROCESS

The goal of this role play is for students to explore and discuss the implementation and impact of the worker's right to refuse on both the worker and the supervisor.

Each student reads their "script" and has 3–4 minutes to prepare what they want to say in order to convince the other side of their perspective. Students do not share their scripts with each other.

1. The discussion between the two students should take no longer than 5 minutes, timed.
2. After 5 minutes, the professor stops the discussion and asks for issues that are arising out of the discussion and lists them on the board.
3. Students should be identifying perceptions that need to be addressed before the process can continue.
4. Then have the students repeat the discussion for 5 minutes to see if they can find an agreement.
5. At the end of the role play, provide time for students to debrief with each other on what worked well and what did not work well based on their own perceptions and feelings.
6. Lead large group/class debrief to review
    a. how the interaction would apply in a workplace setting
    b. what behaviours or responses would work well within a workplace setting
    c. what behaviours or responses would be difficult to manage within a workplace setting
    d. the types of skills or tools students can use to navigate or manage a similar situation in the workplace

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SETTING

This role play takes place in a large urban grocery store. The store is open 24 hours per day. Customer volume is steady except for peak hours between 3 pm and 6 pm when customer traffic usually doubles. There are ten check-out lanes for customers open at all times. Four of the ten are customer self-serve check-out lanes and the other six are staffed by part-time cashiers in each lane.

Yesterday, at around 5 pm, one of the cashiers said she felt threatened by an angry customer. She was so upset by her interactions with this particular customer, she left her station (one of the six check-out lanes), told her supervisor she was refusing to work, and she went home. The supervisor immediately asked another employee who was working in the stock room to take over the unstaffed check-out lane to provide service to the long line up of impatient customers. The replacement worker had to finish cashing out the now irate angry customer, who finally left the store threatening to sue everyone that worked there.

The supervisor had to apologize to the other customers waiting in line for the delay in service. Today, the supervisor has asked to meet with the regional stores' Human Resources practitioner because she (the supervisor) wants to take disciplinary action against the employee for abandoning her shift.

No one has talked with the employee since she left the workplace.

ROLES

Student A: Human Resources Practitioner
You have been called into this particular store to meet with the supervisor. You have been provided with the details of the incident that occurred. Based on what you know so far, you have concerns about how this situation was handled by the supervisor. From your perspective, you are prepared to follow up with disciplinary action against the supervisor for violating the worker's reasonable right to refuse unsafe work.

As you prepare for this meeting, outline the steps that should have taken place when this incident occurred and identify the supervisor's legal responsibilities in this case. At the end of this meeting, you want to have a plan that addresses this type of situation in the future and you want the supervisor to acknowledge their legal duties and responsibilities in this case.

As a bonus, you want the supervisor to apologize to the employee.

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Student B: Grocery Store Supervisor
You have asked to meet with the regional Human Resources practitioner. As far as you are concerned, the employee who walked off the job should be fired. Everybody in the store knows that customers get cranky, especially when volumes are high and the check-out lanes are not moving fast enough. The store's policy is that customers come first, no matter what. From your perspective, this particular employee just needs to toughen up and not take the odd insult or rude remark from a customer so seriously. In fact, you want the employee who stepped in to take over the check-out lane to be hired into the cashier role permanently.

As you prepare for this meeting, outline the steps you think should be implemented to ensure that customers continue to get good service.

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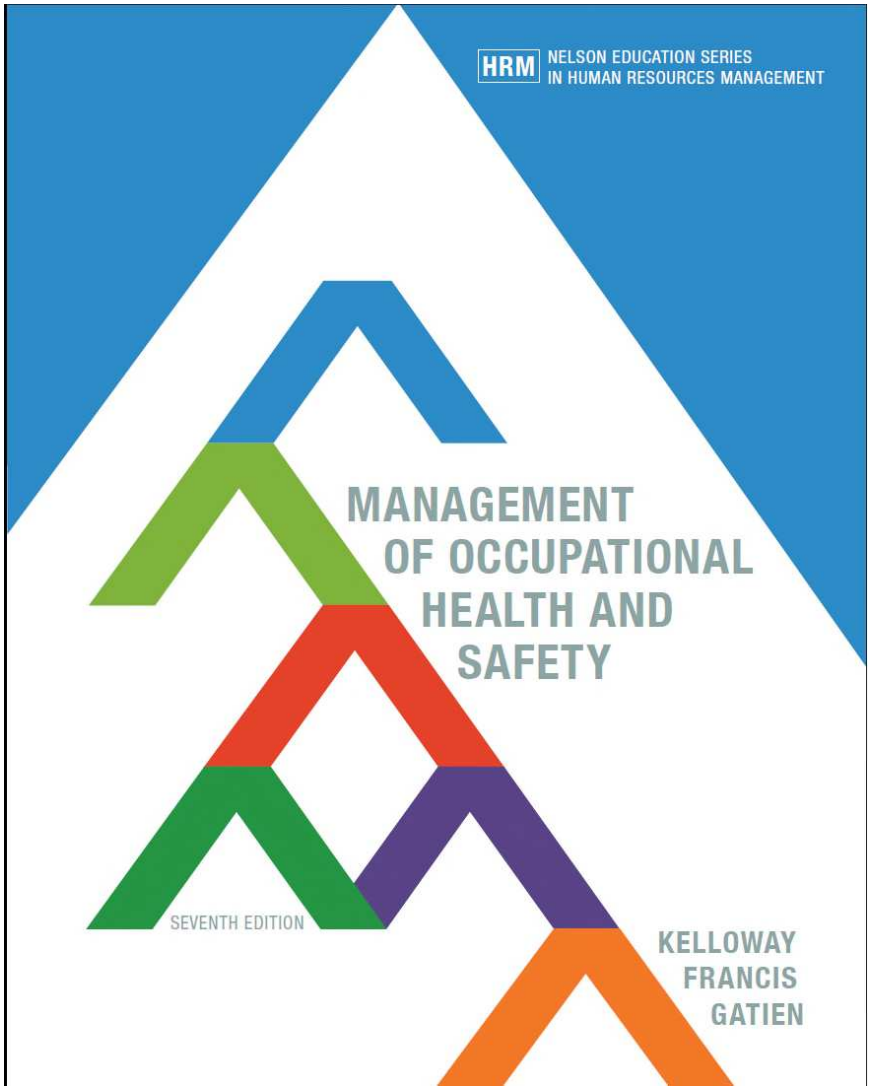
PowerPoint

Presentation for Management of Occupational Health and Safety



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Chapter 2

Legislative Framework

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Learning Objectives

- After reading this chapter, you should be able to:
  - articulate the three health and safety rights granted to workers in Canada
  - describe the regulatory framework surrounding OH&S
  - outline the duties of the major stakeholders under OH&S legislation
  - discuss the nature of and limits placed on work refusals and work stoppages

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Learning Objectives

- After reading this chapter, you should be able to:
  - describe the structure and role of joint health and safety committees
  - discuss WHMIS 2015 as it applies to the right to know about chemical hazards in the workplace
  - explain how OH&S fits into the Criminal Code
  - express how environmental and transportation of dangerous goods legislation interacts with OH&S concerns

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OH&S Key Terms

- Act
  - Federal, provincial, or territorial law that constitutes basic regulatory mechanism for occupational health and safety
- Regulations
  - Explain how general intent of the act will be applied in specific circumstances
- Guidelines and Policies
  - More specific rules that are not legally enforceable unless referred to in a regulation or act
- Standards and Codes
  - Provide practical guidance on the implementation of OH&S practices; often established by agencies such as the CSA or ILO

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The Scope of OH&S Legislation

- All OH&S legislation includes the following elements:
  - An act
  - Powers of enforcement
  - Workers' right to refuse unsafe work
  - Protection of workers from reprisals
  - Duties and responsibilities assigned to employers and others

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Occupational Health and Safety Legislation in Canada

OH&S NOTEBOOK 2.1

OCCUPATIONAL HEALTH AND SAFETY LEGISLATION IN CANADA

Below is a listing of the Canadian jurisdictions for occupational health and safety legislation, the relevant occupational health and safety act, and the agencies across Canada that are responsible for these acts and regulations.

JURISDICTION	LEGISLATION	GOVERNMENT AGENCY RESPONSIBLE
Canada (Federal)	Canada Labour Code, Regulations under Part II	Workplace Safety, Labour Program, Employment & Social Development Canada, Government of Canada
Alberta	Occupational Health and Safety Act	Occupational Health & Safety, Alberta Labour
British Columbia	Workers' Compensation Act, Occupational Health & Safety Regulations	WorkSafeBC
Manitoba	Workplace Safety and Health Act	SAFE Manitoba
New Brunswick	Occupational Health and Safety Act	WorkSafeNB
Newfoundland and Labrador	Occupational Health and Safety Act	Occupational Health & Safety Branch, ServiceNL
Northwest Territories and Nunavut	Safety Act	Workers' Safety and Compensation Commission of the Northwest Territories and Nunavut
Nova Scotia	Occupational Health and Safety Act	Occupational Health & Safety Division, Nova Scotia Labour & Advanced Education
Ontario	Occupational Health and Safety Act	Occupational Health & Safety Branch, Ministry of Labour
Prince Edward Island	Occupational Health and Safety Act	Safe Workplaces, Workers' Compensation Board of PEI
Quebec	Act Respecting Occupational Health and Safety	Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST)
Saskatchewan	Saskatchewan Employment Act, Occupational Health and Safety Regulations	WorkSafe Saskatchewan
Yukon	Occupational Health and Safety Act	Yukon Workers' Compensation Health and Safety Board

Source: CANOSH, Canada's national occupational health and safety website, "Legislation." Found at: http://www.canoshweb.org/Legislation/All/ (accessed June 7, 2016); CCOHS, "Canadian Government Departments Responsible for OH&S—OSH Answers Fact Sheet" (as updated December 8, 2015). Found at: https://www.ccohs.ca/oshanswers/information/govt.html (accessed May 6, 2016).

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OH&S Acts

- Set the minimum requirements of OH&S within each jurisdiction
- Set boundaries for its application, noting any exclusions
- Outline mandatory components of OH&S programming within its jurisdiction
- Articulate duties for major stakeholders

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Stakeholder Duties and Responsibilities: Employers

- General Duty Provision
  - Primary duty directly articulated in the OH&S Act
  - OH&S acts across Canada have the general duty provision requiring employers to take every reasonable precaution to ensure employee safety
- Prescribed Duty:
  - A particular duty to be undertaken because of health and safety regulation

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Stakeholder Duties and Responsibilities: Employers

- General employer duties:
  - Take every reasonable precaution to ensure employee safety
  - Appoint a competent supervisor
  - Provide information in a medical emergency
  - Inform supervisors and workers of possible hazards
  - Post the OH&S act in the workplace
  - Prepare and maintain health and safety policy and review annually (see OH&S Today 2.2)
  - Prepare policies regarding workplace violence and workplace harassment

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Stakeholder Duties and Responsibilities: Contractors

- Constructor (or primary contractor)
  - Oversees the construction of a project and is ultimately responsible for the health and safety of all involved workers
- Similar responsibilities to those outlined for employers

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Stakeholder Duties and Responsibilities: Supervisors

- Supervisor
  - Anyone who has charge of a workplace and authority over a worker
- An OH&S Act may include a general duty provision for supervisors to ensure the health and safety of workers under their supervision
- Prescribed duties include:
  - Ensuring workers comply with OH&S regulations, ensuring workers use or wear safety equipment, devices, or clothing, and advising workers of possible hazards

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Stakeholder Duties and Responsibilities: Supervisors

moodboard/Thinkstock

Talking about safety. Supervisors' duties include advising workers of safety hazards and instructing about safety precautions.

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Stakeholder Duties and Responsibilities: Workers

- Workers' duties include:
  - Take reasonable precautions to ensure their own and others' safety
  - Comply with OH&S Act, regulations, and policies
  - Properly use safety equipment provided
  - Report hazards, such as defective equipment, to a supervisor
  - Report any contraventions of the act or regulations

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Joint Health and Safety Committees

- Required by law in most jurisdictions
  - Where not required there are special provisions for committees to be created
- Help enact the internal responsibility system
- Provide nonadversarial atmosphere in which labour and management can work to create a healthier workplace
- OH&S acts regulate the formation, composition, training, and certification requirements for the JHSC
- Duties of the JHSC:
  - Hazard recognition, risk assessments, record keeping, and responding to employee concerns

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Joint Health and Safety Committees

JHSC Requirements Across Canadian Jurisdictions	
Regulatory Requirement	Jurisdictions Included
20 or more employees	Federal, British Columbia*, Manitoba, Ontario*, New Brunswick, Nova Scotia, Prince Edward Island, Yukon, Northwest Territories/Nunavut
10 or more employees	Newfoundland, Saskatchewan
Workers can request a JHSC with written notice (more than 20 employees)	Quebec
At the Responsible Minister's Request	Alberta

*Special Provision to request JHSC for employers with a smaller number of employees

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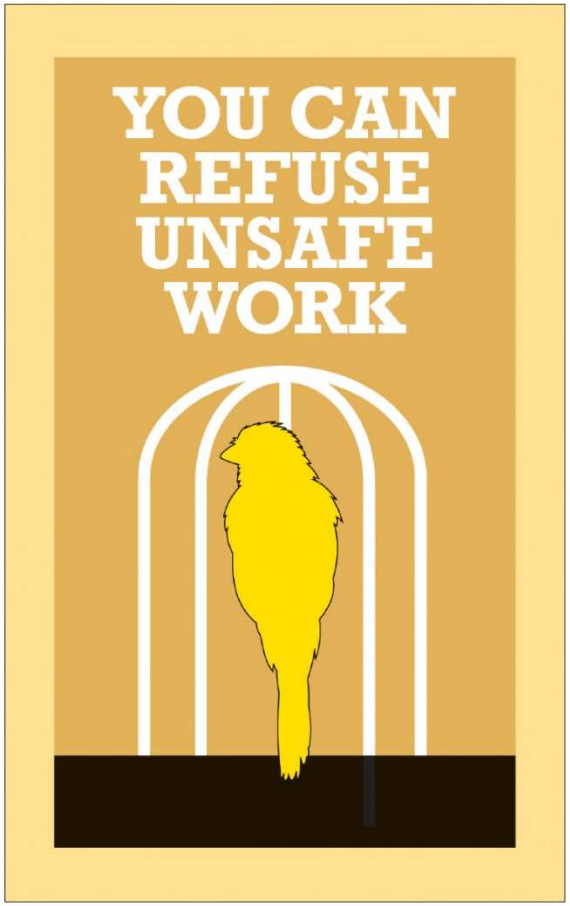
Work Refusals

- Every jurisdiction provides workers the right to refuse unsafe work without fear of reprisal
- Can refuse work tasks if they have reasonable cause to believe the action would bring harm to themselves or to others
- Workers should follow established procedures to report a work refusal



With permission from Canadian Union of Public Employees.

The right to refuse dangerous work without fear of reprisal is available to workers in every jurisdiction in Canada.

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Work Refusals

- Limits
  - Essentially, a worker does not have right to refuse unsafe work if:
    - That work is normal condition of employment
    - The refusal places another person's life in jeopardy
  - Some jurisdictions specify certain professions in its legislation on limited rights to refuse
    - For example, Ontario legislation specifically identifies professions including police officers, fire fighters, and health care workers

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Stop-Work Provisions

- Some jurisdictions have provisions to stop work in dangerous circumstances
- Dangerous circumstances, for example Ontario legislation, is described as follows:
  - A provision of the act or the regulation is being contravened
  - The contravention presents a danger or hazard to a worker
  - The danger or hazard is such that any delay in controlling it may seriously endanger a worker

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Workplace Hazardous Materials Information System (WHMIS)

- The 1988 WHMIS legislation promoted workers' right to know about chemical hazards in the workplace using:
  - Labels to alert the worker that a container contains a potentially hazardous product
  - Material safety data sheets outlining a product's potentially hazardous ingredient(s) and safe handling procedures, and
  - Employee training

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Workplace Hazardous Materials Information System (WHMIS)

- Recent substantial changes to the WHMIS legislation
- WHMIS 2015 incorporates elements of the Globally Harmonized System of Classification and Labelling of Chemicals (GHS)
  - GHS system elements reflected in WHMIS 2015 ease global trade and business interaction
- Some of the changes involve the introduction of new classes of chemicals and new requirements for labels and Safety Data Sheets
- Canadian jurisdictions will transition to the new system over several years leading up to 2018

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Workplace Hazardous Materials Information System (WHMIS)

gevende/Thinkstock

WHMIS legislation, which focuses on chemicals in the workplace, enacts workers' right to know about the hazards in their workplace.

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Corporate Liability for OH&S under the Criminal Code

- Bill C-45, sometimes called the Westray legislation, was passed in 2003 and became law in 2004
- Named after the Westray mine tragedy
  - Mine explosion that killed 26 miners was attributed to corporate negligence
- This legislation added sections to the Criminal Code of Canada that make company executives more accountable when workers are killed or injured on the job as a result of management negligence

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Corporate Liability for OH&S under the Criminal Code

THE CANADIAN PRESS/Andrew Vaughan

Outrage following the mining tragedy at Westray helped prompt changes recognizing corporate criminal liability in the Criminal Code of Canada.

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Corporate Liability for OH&S under the Criminal Code

- This legislation makes a company responsible for:
  - The actions of those who oversee day-to-day operations (e.g., supervisors and mid-level managers)
  - Managers (executive or operational) who intentionally commit, or have employees commit, crimes to benefit the organization
  - Managers who do not take action when they become aware of offences being committed
  - The actions of managers who demonstrate a criminal lack of care (i.e., criminal negligence)

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Corporate Liability for OH&S under the Criminal Code

- Section 217.1: Those in authority for workers have a responsibility to take reasonable steps to protect those workers from harm
- Sections 22.1 and 22.2: Corporations can be criminally liable for negligence and other offences
- There have been several convictions, including large fines and prison sentences, under this law

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Environmental Legislation

- Environmental, OH&S, and transportation of dangerous goods laws are intertwined
  - Practitioners of OH&S need to be familiar with other legislation that has implications of health and safety
- Consider the following example:
  - If a release of a hazardous substance occurs within a non-residential building it falls under the jurisdiction of the authority enforcing the health and safety legislation, but if the release is outside of a building it falls under the jurisdiction of the authority enforcing the environmental legislation
  - Both authorities and sets of legislation may apply

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Environmental Legislation

OH&S NOTEBOOK 2.4

BUILDING AWARENESS OF THE STATUTES RELEVANT TO OH&S IN CANADA

You've likely determined at this point in the chapter that there are many statutes and regulations relevant to OH&S in Canada. First, each jurisdiction has its own occupational health and safety legislation. There are also considerations for OH&S in Canadian human rights and freedoms legislation. Human rights legislation is pivotal in protections and accommodations offered to injured or ill workers. However, we also see that there are overlaps in OH&S, environmental, and transportation spheres. Thus, statutes pertaining to the environment and transportation of dangerous goods also need to be on the radar of employers, OH&S professionals, employees, and other stakeholders in OH&S.

These are some of the federal statutes relevant to OH&S:

- Canadian Environmental Protection Act
- Hazardous Products Act
- Canadian Charter of Rights and Freedoms, Part I of the Constitution Act
- Canada Labour Code, Part IV
- Criminal Code of Canada
- Pest Control Products Act
- Transportation of Dangerous Goods Act
- Radiation Emitting Devices Act
- Canada Shipping Act
- Radiation Protection Regulations

There are also many relevant provincial and territorial statutes relevant to OH&S. These include the occupational health and safety acts, which we have considered throughout the chapter. Provinces and territories also have specific legislation around the protection of human rights and freedoms. Some provinces, such as Ontario and Manitoba, have specific acts pertaining to accessibility for persons with disabilities, which also have OH&S implications, particularly relating to workplace accommodations. In addition, there are provincial/territorial laws pertaining to the environment, waste management, and the transportation of dangerous goods that need to be considered as necessary.

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Transportation of Dangerous Goods

- Regulation of environmental hazards, occupational health and safety, and transportation of dangerous goods is not the exclusive domain of the federal, provincial, or territorial governments
- OH&S professionals should be familiar with the statutes relevant to their particular jurisdiction
- Environmental and transportation legislation seeks to supply the framework within which society can protect itself from the risk that attends the transportation of inherently dangerous materials
- Federal legislation governing the transportation of dangerous goods applies to all persons who handle, offer for transport, transport, or import any dangerous goods

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Video Links

- The following link introduces a Standard:
  - Summary: National Standard for Psychological Health and Safety in Canadian Workplaces, Mental Health Commission of Canada (3min, 21sec)

- The following link summarizes basic worker rights:
  - Eye on Safety: Young Workers' Rights, Canadian Centre for Occupational Health and Safety (CCOHS) (1min, 55sec)

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