Amendments to The Workplace Safety and Health Act

The Workplace Safety and Health Act (the Act) was amended to include new and clarify existing requirements to provide stronger protection for workers in Manitoba. Changes are expected to take effect in Spring 2014.

Key changes to the Act include:

- Enabling a stop work order to apply to all Manitoba workplaces of an employer when similar activities at multiple workplaces involve, or are likely to involve, an imminent risk of serious physical or health injury;
- Providing for the appointment of a chief prevention officer and setting out the officer's mandate;
- Strengthening provisions for a worker exercising their right to refuse unsafe work;
- Requiring a worker safety and health representative in every workplace with 5 or more workers, rather than 10 or more;
- Requiring a workplace safety and health committee in seasonal workplaces, if there are at least 20 workers and the work is expected to continue for at least 90 days;
- Clarifying provisions for paid training and other activities of worker safety and health representatives and committee members; and
- Expanding the list of activities or contraventions for which administrative penalties may be imposed, and strengthening the enforcement of those penalties.

Revised definition – “owner” – definition of owner amended to capture persons or groups acting on behalf of an owner as an agent or delegate

Repealed definition – “division”

NEW definitions

- “branch” means the Workplace Safety and Health Branch
- “director” means the Director of the Workplace Safety and Health Branch
- “improvement order” means an order issued under section 26
- “stop work order” means an order issued under section 36
- “chief prevention officer” means the Chief Prevention Officer appointed under section 17.1

Objects and Purposes of the Act [section 2(2)]

- Workers’ Rights [NEW: section 2.2 (e.i to e.iv)] promoting workers’ rights: to know about safety and health hazards in their workplaces; to participate in safety and health activities at their workplaces; to refuse dangerous work; and to work without being subject to discriminatory action.
Duties and Powers of the Director [section 13]

- **Powers of director [sections 13(d.1) and (d.2)]** director able to make recommendations to the minister and coordinate examinations and investigations of workplace incidents causing physical or health injury to a worker or self-employed person, and prevention activities.

- **Public reporting of orders and penalties [NEW: section 13.1]** – the director may issue public reports disclosing details of improvement orders, stop work orders and administrative penalties made or imposed under this Act. The reports may disclose personal information as defined in *The Freedom of Information and Protection of Privacy Act* (FIPPA).

Chief Prevention Officer [NEW: sections 17.1(1) – (6)]

- **Chief prevention officer [NEW: section 17.1(1)]** minister must appoint a Chief Prevention Officer.

- **Term of appointment [NEW: section 17.1(2)]** – CPO may be appointed for a term not exceeding five years, and successive terms not exceeding five years.

- **Responsibilities [NEW: section 17.1(3)]** – CPO is responsible to provide advice to the minister on prevention of workplace injury and illness and any other matter as requested by the minister, to develop recommendations, an annual report and analysis, and to measure performance on progress and effectiveness of prevention activities.

- **Annual report [NEW: section 17.1(4)]** – CPO’s annual report must be made public by the minister.

- **Workplace injury and illness prevention recommendations [NEW: section 17.1(5)]** – CPO’s recommendations must include a statement of goals for preventing injury and illness in the workplace, key indicators of performance for measuring these goals, and any matter specified by the minister.

- **Consultation [NEW: section 17.1(6)]** – during preparation of recommendations to the minister, the CPO must consult with organizations representing workers, organizations representing employers, technical and professional groups concerned with the Act, other departments and agencies of the government, and any other persons or organizations that the minister considers advisable.

Regulation, Codes and Standards [sections 18-21]

- **Regulations [NEW: section 18(1)(bb.1), (bb.2), and revised sections 18(1)(cc)(i.1) and (ii)]** – New regulations will be created providing:
  - Criteria and procedures for granting exemptions from the regulation
  - Criteria and procedures for allowing one workplace safety and health committee for multiple workplaces
  - Listing provisions of the Act and regulation that involve imminent risk of serious physical or health injury that can result in the issuance of an administrative penalty.

- **Exemption from regulation and Consideration on exemption [sections 21(1) and (2)]** amended to clarify that action taken by the director respecting exemption is as outlined in the regulation.

- **Terms and conditions of order [NEW: section 21(3)]** director may impose any terms or conditions in connection with an exemption order that the director considers necessary to maintain the safety or health of a worker.

- **Reconsideration of exemption order [NEW: section 21(4)]** the director may make a new decision, change or maintain a decision on previously granted exemptions, in situations where further information becomes available, or where conditions of the workplace have changed.

Improvement Orders, Stop Work Orders and Communicating Improvement Orders and Stop Work Orders [sections 26-36]

- **Improvement orders [section26(1)]** removal of ‘within a reasonable time if no period is specified’ (period to always be specified)

- **Achieving compliance with improvement orders [NEW: section 35(2)]** in order for compliance to be achieved, it must be determined so by a safety and health officer (regardless of receipt of an employer’s report of compliance).

This information is available in alternate formats upon request. Ces renseignements sont offerts dans de multiples formats sur demande.
Improvement Orders, Stop Work Orders and Communicating Improvement Orders and Stop Work Orders [sections 26-36] (cont’d)

- **Stop work orders [NEW: section 36(1.1)]** a safety and health officer may issue a stop work order that applies to multiple work sites of the same employer where there exists an imminent risk of serious physical or health injury to workers.
- **Improvement work not affected [section 36(2)]** A stop work order does not prevent the doing of any work or thing that may be necessary in order to remove the risk of injury referred to in subsection (1) or (1.1).

**Appeals [sections 37, 38 and 39]**

- How to appeal (to the director) [section 37(2)] notice of appeal must list persons that may be interested in the appeal.
- Submissions from interested persons [NEW: section 37(2.1)] director of Workplace Safety and Health to give interested persons listed in a notice of appeal the opportunity to provide information.
- How to appeal (to the Board) [section 39(2)] appeal must state reason for the appeal.

**Workplace Safety and Health Committees and Representatives [sections 40 and 41]**

- Workplace safety and health committee [section 40(1)] must be established for seasonal workplaces where 20 or more workers are expected to work for at least 90 days, in addition to workplaces where 20 or more workers are regularly employed, and any other workplace designated by the director.
- Committee for multiple workplaces and Considerations of director [sections 40(6) and 40(7)] – in accordance with regulations* (affected parties – additional info).
- Reconsideration re one committee for multiple workplaces [section 40(7.1)] – director may reconsider an order for one committee where additional information is made known.
- Time off for committee work and Time off for work as representative [sections 40(11) and 41(6)] – worker to receive time off from their regular duties to perform the following safety and health committee member/representative duties:
  - One hour to prepare for committee meeting or representative meeting with employer.
  - Time required to attend each meeting.
  - Time required to attend safety and health training in accordance with section 44, as approved by the employer.
  - Such time as is required to carry out other assigned duties of a committee member or representative.
- Entitlement to pay for work as a committee member and Entitlement to pay for work as a representative [NEW: sections 40(12) and 41(7)] – new provisions clarifying that time spent performing duties of a safety and health committee member or representative is considered time at work; employer to pay worker at regular or premium rate of pay, as applicable.
- Competency of committee members and representatives [NEW: sections 41(8) and 40(13) and] – new provisions requiring employers and prime contractors to ensure that committee members and representatives receive the training required to competently fulfill their duties.
- Workplace safety and health representative [section 41(1)] – representatives required at workplaces with five or more workers
- Workplace safety and health representative [section 41(1)(c)] Power of designating any other workplace or class of workplaces as requiring a workplace safety and health representative transferred from the minister to the director of Workplace Safety and Health.
- Recommendation by co-chair of committee [NEW: section 41.1(1.1)] where a committee fails to reach consensus, either co-chair may forward a safety and health recommendation to the employer.

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Workplace Safety and Health Committees and Representatives [sections 40 and 41]

- Employer response to recommendations and Contents of response [sections 41.1(2) and 41.1(3)] – employer must respond in writing, including short and long term control measures, within 30 days of receiving recommendation to the representative, committee or committee co-chair who submitted the recommendation.

- Information on request [section 41.2] where there is no committee or representative, workers to be provided with reports respecting workplace safety and health.
  - Harassment [section 41.2(b) and (d)] to address confidentiality, employers to provide a summarizing report containing information on the results of a harassment investigation, without disclosing circumstances relating to the complaint or any information that may identify persons involved.

Discriminatory Action [section 42]

- Failure to pay wages or benefits [section 42(2)] – failure to pay wages or benefits when required by the Act is a discriminatory action, in addition to those outlined in section 42(1)(a) through (h).

Right to Refuse Dangerous Work [section 43]

- Inspecting the dangerous condition and Remedial action [section 43(3) and (4)] changed from ‘Inspecting the workplace,’ immediate inspection of the dangerous condition must occur when a worker has exercised their right to refuse.

- Other workers not to be assigned [section 43(6)] – new provisions require an employer to ensure that a worker is not assigned to perform work that has been refused for safety and health concerns until
  - The employer has advised the alternate worker in writing: the first worker’s refusal, the reasons for the refusal, the right to refuse, and why the task does not present a safety and health risk.
  - Where practicable, the first worker advises the alternate worker of the right to refuse and the reasons for the refusal
  - An inspection of the dangerous condition and remedial action taken to correct any dangerous condition under subsection 43(3) and 43(4) has occurred.

- Decision not to issue an order [section 43.1(4)] Safety and health officer must advise in writing where it is decided that the work does not present a danger.*

Educational Leave [section 44]

- Educational leave [section 44(1)] – employer to provide safety and health committee members and representatives the greater of 16 hours or the number of hours the worker normally works during two shifts, for training.

- Pay while attending educational leave programming and Exception [NEW: sections 44(2.1) and (2.2)] – employer to pay safety and health committee members, representatives or workers for the greater of: the hours spent at training or the regularly worked hours during a shift. Does not apply to employers at a construction project site or employers at a seasonal workplace as defined in subclause 40(1)(a)(i).

- Education program at seasonal workplace [NEW: section 44(4)] – for the duration of the seasonal workplace, employers must provide workers with a safety and health education program. Employers must require all workers to attend for a period or periods no less than 30 minutes every two weeks, without a loss of pay or benefits. Each period may be no less than 15 minutes.
Administrative penalty provisions [section 53]

- **Administrative penalty. Imposing a penalty, and When penalty may be imposed [sections 53.1(1), (2), and (3)]** – in addition to failure to comply with an improvement order within the period specified, penalties may also be issued for failure to maintain compliance with an improvement order (once achieved), failure to comply with a specific provision of the act or regulation (where workers or other persons are placed at imminent risk of serious physical or health injury), failure to maintain compliance to a provision previously the subject of a stop work order, and for taking discriminatory action against a worker who has exercised a safety and health right.

- **Imposing a penalty [section 53.1(2)]** power of issuing an administrative penalty – as outlined under the new provisions of 53.1(1) – transferred to the director of Workplace Safety and Health.

- **Appeal to the board [section 53.1(7)]** appeal of administrative penalties must state the reasons for the appeal.

- **Decision of the board and No offence to be charged if penalty is paid [section 53.1(9) and (13)]** relates to the matter under which the penalty is issued (previously failure to comply with an improvement order).

- **Lien for debt [NEW: section 53.1(14)]** when the 30 day period for payment expires without payment under section 53.1(11), a lien and charge may be placed on every estate or interest in real property and personal property of on the person responsible to pay a debt relating to an administrative penalty, including property acquired after the debt arose.

- **Extent of security [NEW: section 53.1(15)]** a lien secures the debt owed, interest accrued, and reasonable costs incurred by the director relating to the lien.

- **When lien takes effect [NEW: section 53.1(16)]** a lien takes effect once a certificate in respect of the lien is registered against a debtor’s land or a financing statement is registered in the Personal Property Registry.

- **Registration and enforcement of lien [NEW: section 53.1(17)]** subsections 28(6) to (14) of *The Pension Benefits Act* apply with references to “employer” meaning “debtor” and “superintendent” the director of Workplace Safety and Health.

Other technical changes

- **Content of program [section 7.4(5)(k)]** revised for clarity, employer required to review safety and health program at least once every 3 years.

- **Duties of director [section 12]** changed from Duties of the director of the division.

- **Powers of minister [section 14.1(e)]** revised to include that the minister may approve recommendations made by the chief prevention officer (in addition to the Minister’s Advisory Council on Workplace Safety and Health).

- **Administration of Act [sections 14(4) and (4.1)]** revised to reflect organization change from division to branch

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