A Guide to the Occupational Health and Safety Act

Introduction

We all share the goal of making Ontario's workplaces safe and healthy.

The *Occupational Health and Safety Act* provides us with the framework and the tools to achieve this goal. It sets out the rights and duties of all parties in the workplace. It establishes procedures for dealing with workplace hazards, and it provides for enforcement of the law where compliance has not been achieved voluntarily.

Changes to the *Act* in 1990 continue the evolution of occupational health and safety legislation in Ontario. These changes build on our combined experience since the *Act* came into force in 1979. They reinforce the structures, in particular the joint health and safety committees, that have proven to be effective. They extend the rights, duties and accountability of all who have a role in workplace health and safety.

Every improvement in occupational health and safety benefits all of us. Through cooperation and commitment, we can make Ontario a safer and healthier place in which to work. It's worth working for.

1. About this Guide

If you are concerned about workplace health and safety, you should take the time to read this guide. It explains what every worker, supervisor, employer, constructor and workplace owner needs to know about the *Occupational Health and Safety Act*. It describes everyone's rights and responsibilities and it answers, in plain language, the questions that are most commonly asked about the *Act*.

However, please remember that this guide is only an explanation of the *Act*. It is not a legal document. To make the guide easier to read, some parts of the *Act* have been omitted or condensed. The guide does not cover every situation or answer every question about the legal requirements concerning workplace health and safety in Ontario.

In some situations, you may need to know exactly what the *Act* says, so that you can be sure you are making the right decision or giving the right advice. In such cases, you must read the *Act* and the regulations. But if you read this guide beforehand, you will find the legislation easier to understand. Throughout the guide, the relevant section numbers of the *Act* have been inserted in the text.

If you need help in answering questions about the *Act* or the regulations, you should contact your nearest office of the Ministry of Labour. You can find the addresses and phone numbers of offices around the province in Appendix C.

2. About the Act

The *Occupational Health and Safety Act* came into force on October 1, 1979. Its purpose is to protect workers against health and safety hazards on the job. The main features of the *Act* are described below.

The Workplace Partnership

Workers and employers must share the responsibility for occupational health and safety. This concept of an internal responsibility system is based on the principle that the workplace parties themselves are in the best position to identify health and safety problems and to develop solutions. Ideally, the internal responsibility system involves everyone, from the company chief executive officer to the worker. How well the system works depends upon whether there is a complete, unbroken chain of responsibility and accountability for health and safety.

Several provisions of the *Act* are aimed at fostering the internal responsibility system. Two new and important provisions are: (1) the requirement for employers to have a health and safety policy and program; and (2) the direct responsibility that officers of a corporation have for health and safety. The joint health and safety committee, or, in smaller workplaces, the health and safety representative, has a role to play by monitoring the internal responsibility system. The *Act* sets out the basic rules of operation for both joint committees and health and safety representatives.

The Rights of Workers

To balance the employer's general right to direct the work force and control the production process in the workplace, the *Act* gives four basic rights to workers.

THE RIGHT TO PARTICIPATE

Workers have the right to be part of the process of identifying and resolving workplace health and safety concerns. This right is expressed through worker membership on joint health and safety committees, or through worker health and safety representatives.

THE RIGHT TO KNOW

Workers have the right to know about any potential hazards to which they may be exposed. This means the right to be trained and to have information on machinery, equipment, working conditions, processes and hazardous substances. The parts of the *Act* that implement the Workplace Hazardous Materials Information System (WHMIS) play an important role in giving workers the right to know.

THE RIGHT TO REFUSE WORK

Workers have the right to refuse work that they believe is dangerous to either their own health and safety or that of another worker. The *Act* describes the exact process for refusing dangerous work and the responsibilities of the employer in responding to such a refusal.

THE RIGHT TO STOP WORK

In certain circumstances, members of a joint health and safety committee who are 'certified' have the right to stop work that is dangerous to any worker. The *Act* sets out these circumstances and how the right to stop work can be exercised.

Duties of Employers and Other Persons

The *Act* imposes duties on those who have any degree of control over the workplace, the materials and equipment in the workplace and the direction of the work force.

There is a general duty on employers to take all reasonable precautions to protect the health and safety of workers. In addition, the *Act* and regulations set out many specific responsibilities of the employer. For example, there are duties that specifically relate to toxic substances, hazardous machinery, worker education and personal protective equipment.

There is a duty on all officers and directors of corporations to ensure that their corporations comply with the *Act* and regulations.

The duties of workers are generally to work safely, in accordance with the *Act* and regulations.

Workplace Health and Safety Agency

The Workplace Health and Safety Agency was established in 1990. It is run jointly by representatives of industry and labour in Ontario. The main purpose of the agency is to develop and deliver worker training programs.

Other functions of the agency include setting standards for the certification of joint committee members, funding occupational health and safety research and overseeing the operation of the accident prevention associations, worker training centres and health and safety clinics.

Enforcement

If the internal responsibility system fails to address adequately the health and safety issues in a workplace, or if the *Act* and regulations are not being followed, the Ministry of Labour has the authority to enforce the law.

Inspectors have broad powers to, among other things, inspect any workplace, investigate any potentially hazardous situation and work refusal, order compliance with the *Act* and regulations and initiate prosecutions.

Employers, supervisors and workers must assist and co-operate with inspectors.

Regulations

The *Occupational Health and Safety Act*, which gives the Government of Ontario broad powers to make regulations, sets out general principles and duties for the workplace parties. The regulations set out in detail how these duties are to be carried out. Many regulations have been passed under the *Act*. For example, there are three separate safety regulations that apply to industrial establishments, construction sites and mines. There are also regulations for each of 11 different chemicals known as 'designated substances'. These regulations apply only to workplaces where designated substances are present.

Employers, supervisors, owners and constructors, among others, have an obligation to know and comply with the regulations that apply to their workplaces. A complete list of the regulations that have been passed under the *Act* can be found in Appendix B.

3. Who Is Covered by the Act?

Almost every worker, supervisor, employer and workplace in Ontario is covered by the *Occupational Health and Safety Act* and regulations. Also covered are workplace owners, constructors and suppliers of equipment or materials to workplaces that are covered by the *Act*. Workplaces that are not covered are listed at the end of this chapter.

Definitions

WORKPLACE

Any place in, on or near to where a worker works. A workplace could be a building, a mine, a construction site, an open field, a road, a forest or even a beach. The test is: Is the worker being directed and paid to be there, or to be near there? If the answer is 'yes', then it is a workplace.

WORKER

A person who is paid to perform work or supply services. This does not include an inmate of a correctional or similar institution working inside the institution on a work project or rehabilitation program.

EMPLOYER

A person who employs one or more workers. This includes someone who contracts for a worker's services. For example, if you pay a temporary help agency for the services of

workers supplied by the agency, you are the employer of those workers while they are under your direction.

A contractor or subcontractor who performs work or supplies services for an owner, constructor, contractor or subcontractor is also an employer if he or she in turn employs workers.

CONSTRUCTOR

A person who undertakes a construction project for the owner of a site or building. This also includes the owner who personally undertakes all or part of the project, whether alone or with another employer. The constructor is generally the person who has overall control of a project.[(1)]

SUPERVISOR

A person who has charge of a workplace or authority over any worker.

OWNER

The person who owns the lands or premises that are being (or will be) used as a workplace. This includes a tenant, lessee, trustee, receiver, mortgagee in possession or occupier of the lands or premises. It also includes any person who acts as an agent for the owner.

LICENSEE

A person who holds a logging licence under the *Crown Timber Act*. Under the *Occupational Health and Safety Act*, a licensee is not an employer. However, he or she does have certain duties and must comply with any orders issued by an inspector.

SELF-EMPLOYED

The *Act* has limited application to the self-employed (section 4). The sections of this guide that explain the duties of the employer indicate those duties that apply to the self-employed. In addition, the inspector's powers to enforce the law, as well as the penalties for a violation, apply -- with the necessary modifications -- to the self-employed.

Work and Workplaces Not Covered

The *Act* does not apply to:

work done by the owner or occupant, or a servant, in a private residence or on the connected land (section 3(1));

farming operations (section 3(2)); and

workplaces under federal (Government of Canada) jurisdiction, such as:

- post offices
- airlines and airports
- banks
- some grain elevators
- Bell Telephone
- interprovincial trucking, shipping, railway and bus companies.

Federal workplaces are covered under a different law: the *Canada Labour Code*. However, federal authorities accept that outside contractors and their employees, while in federal workplaces, are under provincial jurisdiction.

If there is any question about whether you or your workplace is covered by the *Act*, contact your nearest Ministry of Labour office.

4. Joint Health and Safety

Committees

A joint health and safety committee is an advisory group of worker and management representatives. The workplace partnership to improve health and safety depends on the joint committee. It meets regularly to discuss health and safety concerns, review progress and make recommendations.

This chapter outlines the requirements of the *Act* that cover committees. More detailed information is available in the separate booklet called *A Guide for Joint Health and Safety Committees and Representatives in the Workplace*, available from the Ministry of Labour and the Ontario Government Book Store.

Where are joint committees required?

Joint committees are required in the following workplaces:

- any workplace that regularly employs 20 or more workers (section 9(2)(a));
- construction projects where 20 or more workers are regularly employed and that are expected to last three months or more;
- any workplace (other than a construction project) to which a regulation concerning a designated substance applies, even if fewer than 20 workers are regularly employed (section 9(2)(c));
- any workplace where an order has been issued under section 33 of the *Act* (section 33 orders are explained in Chapter 9 of this guide, 'Toxic Substances'), even if fewer than 20 workers are regularly employed (section 9(2)(b)); and
- any workplace or construction project that has been ordered by the Minister of Labour to establish a committee (section 9(3)).

Who is responsible for establishing a committee?

Every employer or constructor whose workplace falls into one of the above categories is responsible for establishing a joint committee. This means causing the members to be chosen and setting aside a time and place for meetings.

How many members must a committee have?

The minimum size of the committee depends on the number of workers.

Where fewer than 50 workers are regularly employed, the committee must have at least two members (section 9(6)(a)).

If 50 or more workers are regularly employed, the committee must have at least four members (section 9(6)(b)).

As a general guide, the committee should be large enough so that the health and safety concerns of the entire workplace are represented. For example, if a workplace has a plant, office, laboratory, warehouse and delivery drivers, each of these areas should be represented on the committee.

Who can serve as a committee member? How are members chosen?

Except for the following rules, there are no restrictions on who can serve on joint health and safety committees:

- At least half the members on the committee must represent workers (section 9(7)).
- An employee who has the authority to discipline, hire, fire or recommend discipline, hiring or firing is considered a managerial employee. He or she can serve on the committee, but not as a worker representative.
- The members representing workers must be employed by the workplace covered by the committee. Members no longer employed by the workplace cannot serve on the committee (section 9(10)).
- The members representing workers must be chosen by the workers or, where applicable, by the trade union(s) representing the workers (section 9(8)).
- The managerial members of the committee are chosen by the employer. Where possible, they should be employed at that workplace. If there are no managerial employees at the workplace covered by the committee, these members can come from another workplace of the employer (section 9(9)).
- At least one worker and one management representative on the committee must be certified (section 9(12)). (For more information on certified members, see page 16.)
- The names and work locations of the committee members must be posted in the workplace, where they are most likely to be seen by the workers. The employer or constructor is responsible for this posting (section 9(32)).

How should a committee operate?

The *Act* sets out only a few rules on how the committee should operate. Other than the following, the committee is free to decide its own procedures.

The committee must meet at the workplace at least once every three months (section 9(33)). Many committees may need to meet more often.

The committee must be co-chaired by two members. One of the co-chairs is chosen by the members who represent workers, the other by the members representing the employer (section 9(11)).

Members are entitled to one hour of paid preparation time before each meeting. The committee can decide that more paid preparation time is required. Members are also paid for time spent at meetings and for carrying out certain other committee duties. They are paid their regular rate or, where applicable, their premium rate of pay (section 9(34) and (35)).

The committee must keep a record (minutes) of its meetings. These minutes must be made available, upon request, to a Ministry of Labour inspector (section 9(22)).

The Powers of the Joint Health and Safety Committee

The joint health and safety committee has several important rights and responsibilities.

IDENTIFY WORKPLACE HAZARDS

The main purpose of the committee is to identify workplace hazards, such as machinery, substances, production processes, working conditions, procedures or anything else that can endanger the health and safety of workers (section 9(18)(a)). To a large extent, this purpose is achieved by carrying out inspections of the workplace.

The members of the committee who represent workers must choose one of their group to inspect the workplace. This member does not always have to be the same person but should be, if possible, a 'certified' committee member (section 9(23) and (24)).

The workplace should be inspected at least once a month. In some cases, this may not be practical. For example, the workplace may be too large and complex to be inspected fully each month. In such a case, the committee should establish an inspection schedule that will ensure that at least *part* of the workplace is inspected each month and the *entire* workplace is inspected at least once a year (sections 9(26), (27) and (28)).

The committee member who performs the inspection must report to the committee any real or potential hazard facing workers.

The committee must consider this information within a reasonable period of time (section 9(30)).

A Ministry of Labour inspector can order that the workplace be inspected more frequently than the *Act* prescribes.

OBTAIN INFORMATION FROM THE EMPLOYER

For most committees, the employer is likely to be an important source of information. The committee has the power to obtain information from the employer:

about any existing or potential hazards in the workplace (section 9(18)(d)(i));

about the health and safety experience and work practices and standards in other workplaces of which the employer is aware (section 9(18)(d)(ii)); and

about any workplace testing that is being carried out for occupational health and safety purposes (section 9(18)(e)). In addition, the committee has the right to be consulted about any workplace testing and to have a committee member representing workers present at the beginning of the testing to validate the procedures and/or the results (section 9(18)(f)).

MAKE RECOMMENDATIONS TO THE EMPLOYER

The committee has the power to make recommendations to the employer and to the workers on ways to improve workplace health and safety. For example, the committee could recommend that a new type of hearing protection be given to workers in noisy areas, or that safety training programs be established, or that special testing of the work environment be carried out (sections 9(18)(b) and (c)).

The employer must respond to any written recommendations from the committee, in writing, within 21 days. If the employer agrees with the recommendations, the response must include a timetable for implementation. For example, if the employer agrees that a special training program should be established, the response must

say when the program will begin to be developed and when it will be delivered. If the employer does not agree with a recommendation, the response must give the reasons for disagreement (sections 9(20) and (21)).

INVESTIGATE WORK REFUSALS

The committee members who represent workers must designate one of their group to be present at the investigation of a work refusal. (For more information, see Chapter 7, 'The Right to Refuse Work'.)

INVESTIGATE SERIOUS ACCIDENTS

If a worker is killed or critically injured on the job, the accident is investigated. The members of the committee who represent workers should choose one or more of their group to conduct such an investigation (section 9(31)). This investigation can be part of, or in addition to, an investigation conducted by the employer or the Ministry of Labour.

The member(s) chosen to investigate can inspect the actual scene of the accident (but cannot alter it without permission from an inspector) and can also inspect any machine, equipment, substance, etc., that may be connected with the accident. The findings must be reported to the committee and to a director of the Ministry of Labour.

OBTAIN INFORMATION FROM THE WORKERS' COMPENSATION BOARD

At the committee's request, the Workers' Compensation Board (WCB) must provide an annual summary of information about compensation claims relating to all workplaces of the employer in Ontario (section 12(1)). This information must include:

- number of fatalities
- number of lost-time injuries
- number of workdays lost
- number of injuries requiring medical aid but that did not involve lost workdays
- incidence of occupational illnesses
- number of occupational injuries.

The WCB can include any other information it considers necessary.

When this report is received from the WCB, the employer must post it in the workplace, where it is likely to be seen by the workers. If necessary, it may be posted in more than one area of the workplace, to ensure that all workers see it.[(2)]

Employer's Duty to Co-operate with the Committee

The *Act* places a general duty on the employer to co-operate with and help the joint committee to carry out its responsibilities (section 25(2)(e)). In particular, the employer is required to:

- provide any information that the committee has the power to obtain from the employer;
- respond to committee recommendations, as described earlier;
- give the committee copies of all orders and reports issued by the Ministry of Labour inspector; and
- report any workplace deaths, injuries and illnesses to the committee.

Certified Members of Committees

A 'certified' member of a joint committee is a member who has received special training in occupational health and safety and has been certified by the Workplace Health and

Safety Agency. He or she plays an important role on the committee and in the workplace, with specific authority and responsibilities.[(3)]

In general, all workplaces that are required to have joint committees must also have certified committee members. The only exception is a construction project on which fewer than 50 workers are regularly employed (section 9(13)).

Who decides which committee members will be certified?

The employer is responsible for ensuring that the joint committee has certified members. There is no limit to how many members may be certified, but there must be at least two: one representing workers and one representing the employer.

The workers (or the union) who selected the joint committee members also decide which members representing workers are to be certified (section 9(14)).

If more than one of the committee members representing workers is certified, the workers or the union must designate one or more of them as being entitled to exercise the rights and duties of certified members (section 9(15)).

Similarly, if more than one of the committee members representing the employer is certified, the employer must designate one or more as being able to exercise the rights and duties of certified members (section 9(16)).

In other words, even though a person is a committee member, and has been trained and certified by the agency, he or she does not have the rights and powers of a certified member unless designated.

How do committee members become certified?

The Workplace Health and Safety Agency (see Chapter 10) has the authority, under the *Act*, to certify members and set their training requirements.

What rights and duties do certified members have?

Because certified members have special training in workplace health and safety, they have special responsibilities in the workplace.

Where possible, the certified member who represents workers should conduct the monthly workplace inspections (section 9(24)). He or she should also be present, if possible, at the investigation of a work refusal.

A certified member who receives a complaint that dangerous circumstances exist is entitled to investigate the complaint (section 48(1)).

Certified members also have the right, under certain circumstances, to order the employer to stop work that is dangerous to a worker. For a complete explanation of this right, see Chapter 8, 'The Right to Stop Work'.

Are certified members paid while they perform their duties?

Yes. A certified member who is exercising his or her rights and duties under the *Act* is considered to be at work. He or she must

be paid the regular or premium rate by the employer, whichever is applicable (section 48(2)).

The same applies if a committee member is fulfilling the requirements for becoming certified as set by the Workplace Health and Safety Agency (section 9(36)). In the construction industry, however, the agency pays the worker for the time spent to become certified. The agency recovers these costs through assessments levied by the Workers' Compensation Board on all employers in the construction industry.

Worker Trades Committees on Construction Projects

In addition to the above rules concerning joint health and safety committees, there are special rules for the establishment and operation of worker trades committees on certain construction projects.

What is a worker trades committee?

This committee is similar to the joint health and safety committee, but there are two differences:

1. All members of the worker trades committee are chosen by the workers in those trades, or by their union (section 10(3)).

2. Worker trades committees are required on projects that regularly employ 50 or more workers and are expected to last at least three months (section 10(1)).

It is the responsibility of the joint health and safety committee, not of the employer or constructor, to establish the worker trades committee. The joint committee should ensure that all trades are represented (section 10(2)).

What are the powers of the worker trades committee?

The worker trades committee has no special powers. Its purpose is to inform the joint committee about the health and safety concerns of the tradespeople employed on the project (section 10(4)). It may also serve as a forum to resolve problems that arise between trades. The joint committee has the authority to act on the information provided by the worker trades committee.

How often must a worker trades committee meet? *Are members paid for attending meetings?*

There is no rule about how often this committee must meet. The joint health and safety committee for the project must decide the maximum period of time for which members of the trades committee are entitled to be paid for attending meetings (section 10(6)). For example, if the joint committee decides that the worker trades committee should meet once a week for an hour, that is the maximum period of time that any member can be paid for attending such meetings.

Members of worker trades committees must be allowed the necessary time to attend meetings. They are paid during these meetings as if they were performing their regular jobs. If a premium rate would apply at the time a meeting is held, it must be paid (section 10(5)).

Confidentiality of Information

Joint committee members may from time to time come across confidential information. Therefore, the *Act* requires committee members to observe some basic rules of confidentiality (section 63). Except where allowed under this *Act*, or as required by another law, committee members:

- must not disclose any information about any workplace tests or inquiries conducted under the *Act* or regulations;
- must not reveal the name of any person from whom information is received;
- must not disclose any secret manufacturing process or trade information; and
- may disclose the results of any medical examinations or tests of workers only in a way that does not identify anyone.

5. Health and Safety Representatives

Not all workplaces are required to have a joint health and safety committee. In small workplaces, a health and safety representative of the workers is required instead. This chapter outlines the provisions of the *Act* that cover health and safety representatives.

A health and safety representative is required at a workplace or construction project where six to 19 workers are regularly employed, and where there is no joint committee (section 8(1)).

The representative must be chosen by the workers, or by the union if there is one (section 8(5)).

Health and safety representatives have essentially the same powers as joint committee members. If you are a health and safety representative, you should read Chapter 4, 'Joint Health and Safety Committees', and also refer to the separate guide for joint committees and representatives.

The Powers of the Health and Safety Representative

A health and safety representative has the power to:

IDENTIFY WORKPLACE HAZARDS

The health and safety representative has the power to identify workplace hazards. This power is usually exercised by conducting workplace inspections.

No matter how small the workplace, the representative must inspect it at least once a month (section 8(6)). If it is not practical, for some reason, to inspect the entire workplace once a month, at least part of it must be inspected monthly, following a schedule agreed upon by the representative and the employer. The entire workplace must be inspected at least once a year (sections 8(7) and (8)).

Other workers, as well as the employer, must give the representative any information and assistance needed to carry out these inspections (section 8(9)).

OBTAIN INFORMATION FROM THE EMPLOYER

The health and safety representative is entitled to the same information available to a joint committee member. Under the *Act*, the employer must share with the representative any such information that he or she has (sections 8(11)(a) and (c)).

BE CONSULTED ABOUT WORKPLACE TESTING

If the employer intends to do testing of any kind in or about the workplace and related to occupational health and safety, the representative has the right to be consulted before the testing takes place. He or she may also be present at the beginning of such testing (section 8(11)(b)).

MAKE RECOMMENDATIONS TO THE EMPLOYER

The representative has the power to make recommendations to the employer on ways to improve workplace health and safety - the same power given to joint committees.

The employer must respond in writing to any written recommendations within 21 days (section 8(12)).

INVESTIGATE WORK REFUSALS

The health and safety representative should be present at the investigation of a work refusal. (For more information, see Chapter 7, 'The Right to Refuse Work'.)

INVESTIGATE SERIOUS ACCIDENTS

If a worker is killed or critically injured on the job, the representative has the right to inspect the scene of the accident

and any machine, equipment, substance, etc., that may be connected with the accident. His or her findings must be reported in writing to a director of the Ministry of Labour (section 8(14)).

REQUEST INFORMATION FROM THE WORKERS' COMPENSATION BOARD

The health and safety representative is entitled to request the same information from the Workers' Compensation Board that is available to a joint committee member. When this information is received from the WCB, the employer must post it in the workplace, in a location where it is likely to be seen by the workers (section 12).

Are representatives paid while performing their duties?

Yes. A representative is entitled to carry out inspections and investigations. During this time, he or she must be paid the regular or premium rate, whichever is applicable (section 8(15)).

Confidentiality of Information

The health and safety representative has the same duty of confidentiality as that imposed on joint committee members.

6. Duties of Employers and Other Persons

The *Occupational Health and Safety Act* places duties on many different categories of individuals associated with workplaces, such as employers, constructors, supervisors, owners, suppliers, licensees, officers of a corporation and workers. This chapter outlines the duties of these people.

General Duties of Employers

If you are an employer in Ontario who is covered by the *Act*, you have an obligation to:

- instruct, inform and supervise workers to protect their health and safety (section 25(2)(a));
- assist in a medical emergency by providing any information -- including confidential business information -- to a qualified medical practitioner who requests the information in order to diagnose or treat any person (section 25(2)(b));
- appoint competent persons as supervisors (section 25(2)(c)). 'Competent person' has a very specific meaning under the *Act*. He or she must:

- be qualified -- through knowledge, training and experience -- to organize the work and its performance;

- be familiar with the *Act* and the regulations that apply to the work being performed in the workplace;

- know about any actual or potential danger to health and safety in the workplace;[(4)]

- inform a worker, or a person in authority over a worker, about any hazard in the work and train that worker in the handling, storage, use, disposal and transport of any equipment, substances, tools, material, etc. (section 25(2)(d));
- help committees and health and safety representatives to carry out their duties (section 25(2)(e));
- not employ underage workers or knowingly permit underage persons in or near the workplace (sections 25(2)(f) and (g));[(5)]
- take every precaution reasonable in the circumstances for the protection of a worker (section 25(2)(h));
- post in the workplace a copy of the *Occupational Health and Safety Act*, as well as explanatory material prepared by the ministry that outlines the rights, responsibilities and duties of workers. This material must be in English and the majority language in the workplace (section 25(2)(i));
- prepare a written occupational health and safety policy, review that policy at least once a year and set up a program to implement it (section 25(2)(j)).[(6)] For guidance on how to do this, see Appendix A;
- post a copy of the occupational health and safety policy in the workplace, where workers will be most likely to see it (section 25 (2)(k));
- provide the joint committee or the health and safety representative with the results of any occupational health and safety report that the employer has. If the report is in writing, the employer must also provide a copy of the relevant parts of the report (section 25(2)(l));
- advise workers of the results of such a report. If the report is in writing, the employer must, on request, make available to workers copies of those portions that concern occupational health and safety (section 25(2)(m)); and
- ensure that every part of the physical structure of the workplace can support all loads to which it may be subjected, in accordance with the *Building Code Act* and any standards prescribed by the ministry (section 25(1)(e)). This duty also applies to the self-employed.

Prescribed Duties of Employers

The word 'prescribed' appears in many sections of the *Act*. It means that a regulation must exist in order to put into effect the requirements of that section. Where there is no regulation, the requirements of that section are not in force.

Employers and supervisors have an obligation to know which regulations apply to their workplaces. If there is any uncertainty, an inspector should be consulted.

Here is a list of duties of employers, under the *Act*, which may be prescribed. The first seven duties also apply to the self-employed. *Where there is a regulation*, an employer must:

- provide and maintain in good condition any prescribed equipment, materials and protective devices (sections 25(1)(a) and (b));
- ensure that the above are used in accordance with the regulations (section 25(1)(d));
- carry out any measures and procedures that are prescribed for the workplace (section 25(1)(c));
- keep and maintain accurate records, as prescribed, of the handling, storage, use and disposal of biological, chemical or physical agents (section 26(1)(c));
- notify a director of the Ministry of Labour of the use or introduction into a workplace of any prescribed biological, chemical or physical agents (section 26(1)(e));
- monitor, as prescribed, the levels of biological, chemical, or physical agents and keep and post accurate records of these levels (section 26(1)(f));
- comply with a prescribed standard that limits the exposure of a worker to biological, chemical or physical agents (section 26(1)(g));
- keep, maintain and make available to workers prescribed records of worker exposure to chemical, biological or physical agents (section 26(1)(d));
- establish and maintain an occupational health service for workers, as prescribed (sections 26(1)(a) and (b));
- provide prescribed medical surveillance programs and safety-related medical examinations and tests, for the benefit of workers (sections 26(1)(h) and (i));[(7)]
- ensure, where prescribed, that only workers who have taken any prescribed medical examinations, tests or X-rays and who have been found physically fit to work, be allowed to work or be in a workplace (section 26(1)(j));
- where so prescribed, provide a worker with written instructions on the measures and procedures to be taken for his or her protection (section 26(1)(k)); and
- carry out any prescribed training programs for workers, supervisors and committee members (section 26(1)(l)).

Duties of Employers Concerning Toxic Substances

In workplaces where there are toxic or hazardous substances, employers have many specific duties. These are described in detail in Chapter 9, 'Toxic Substances'.

Notices Required from Employers[(8)]

If workplace accidents or illnesses occur, the employer has the following duties to notify certain people:

- If a person has been critically injured or killed on the job, the employer must immediately notify an inspector, the joint committee (or health and safety representative) and the union, if there is one. This notice must be by direct means, such as by telephone, telegram or facsimile. Within 48 hours, the employer must also notify, in writing, a director of the Ministry of Labour, giving the circumstances of the occurrence and any information that may be prescribed (section 51(1)).
- If an accident, explosion or fire occurs and a worker is disabled or requires medical attention, the employer must notify a director of the Ministry of Labour, the joint committee (or health and safety representative) and the union, if any, within four days of the accident. This notice must be in writing and must contain any prescribed information (section 52(1)).
- If an employer is told that a worker has an occupational illness or that a claim for an occupational illness has been filed with the Workers' Compensation Board, the employer must notify a director of the Ministry of Labour, the joint committee (or health and safety representative) and the union, if any, within four days. This notice must be in writing and must contain any prescribed information (section 52(2)). The duty to notify applies not only to current employees but also to former ones (section 52(3)).

Even if no one is hurt, written notice of an accident or unexpected event that could have caused an injury at a construction site or in a mine or mining plant is required from the constructor of the project or owner of the mine or mining plant. This notice must be given to a director of the Ministry of Labour, the joint committee (or health and safety representative) and the trade union, if any, within two days and must contain any prescribed information (section 53).

Duties of Supervisors

The *Act* sets out certain specific duties for workplace supervisors. A supervisor must:

- ensure that a worker complies with the *Act* and regulations (section 27(1)(a));
- ensure that any equipment, protective devices or clothing required by the employer is used or worn by the worker (section 27(1)(b));
- advise a worker of any potential or actual health or safety dangers known by the supervisor (section 27(2)(a));
- if prescribed, provide a worker with written instructions about the measures and procedures to be taken for the worker's protection (section 27(2)(b)); and
- take every precaution reasonable in the circumstances for the protection of workers (section 27(2)(c)).

Duties of Constructors

Under the *Act*, constructors are employers, with exactly the same duties. In addition, constructors are given the specific responsibility, on projects they undertake, to ensure that:

- the measures and procedures in the *Act* and regulations are carried out (section 23(1)(a));
- every employer and worker on the project complies with the *Act* and regulations (section 23(1)(b)); and
- the health and safety of workers on the project are protected (section 23(1)(b)).

A constructor may also be required to give written notice to a director, containing prescribed information before work begins on a project (section 23(2)). If a constructor is not sure of the obligation to give such a notice, he or she should check with the nearest office of the Ministry of Labour.

Duties of Owners

A person who owns a workplace that is not a construction project also has both general and prescribed duties. An owner must ensure that:

- workplace facilities are provided and maintained as prescribed (sections 29(1)(a)(i) and (ii));
- the workplace complies with the regulations (section 29(1)(a)(iii));
- no workplace is constructed, developed, reconstructed or altered except in compliance with the *Act* and regulations (section 29(1)(a)(iv)); and
- workplace drawings, plans or specifications are given to a director of the Ministry of Labour, as prescribed (section 29(1)(b)).

An owner or employer can be required, by regulation, to file with the ministry, before any work is done, complete plans for the construction of or change to a workplace (section 29(3)(a)). These plans, and any subsequent changes in the plans, are reviewed by a ministry engineer to ensure compliance with the *Act* and regulations. The ministry engineer may require additional information on the plans from the employer or owner (section 29(4)).

After the plans have been reviewed by the ministry engineer, they must be available at the workplace for examination by a ministry inspector (section 29(3)(b)).

The owner of a mine must update drawings and plans every six months and include details, as prescribed (section 29(2)).

DUTIES OF OWNERS AND CONSTRUCTORS

CONCERNING DESIGNATED SUBSTANCES

Several general duties regarding designated substances apply to all owners of construction projects as well as to constructors.

Before beginning any work, the owner must first determine if there are any designated substances present at the project site. If there are, the owner must prepare a complete list (section 30(1)).

This list must be included as part of any tendering information on a project (section 30(2)).

Before the owner can enter into a binding contract with a constructor to work on a site where there are designated substances, the owner must ensure that the constructor has a copy of the list (section 30(3)). The constructor must in turn ensure that any prospective contractor or subcontractor has a copy of the list before any binding contract for work on the project can be made (section 30(4)).

An owner is liable to a constructor and every contractor and subcontractor who suffers any loss or damages as a result of the presence of designated substances that were not on the list. This liability does not apply if the owner could not reasonably have known about the presence of the designated substance(s) (section 30(5)).

The constructor is likewise liable for any damages or losses suffered by contractors and subcontractors if they were not informed by the constructor about a designated substance that was on the list prepared by the owner (section 30(6)).

Duties of Suppliers

Every person who supplies workplace equipment of any kind under a rental, leasing or similar arrangement must ensure that the equipment complies with the *Act* and regulations and is in good condition. The supplier must also maintain the equipment in good condition if this is his or her responsibility under the rental or leasing arrangement (section 31(1)).

Duties of Licensees

A licensed area is land on which the licensee is authorized to cut Crown timber (section 24(2)). A licensee must ensure that, in the licensed area:

- the measures and procedures in the *Act* and regulations are carried out;
- every employer logging for the licensee complies with the *Act* and regulations; and
- the health and safety of workers employed by those employers are protected (section 24(1)).

Duties of Corporate Officers and Directors

Every officer and director of a corporation must take all reasonable care to ensure that the corporation complies with the *Act* and regulations as well as with any orders and requirements of Ministry of Labour inspectors, directors and the minister (section 32).

Liability of Architects and Engineers

Architects and engineers are considered to be in violation of the *Act* if they negligently or incompetently give advice or a certification required under the *Act* and, as a result, a worker is endangered (section 31(2)).

Duties of Workers

Workers also have several general duties under the *Act*. A worker must take responsibility for personal health and safety insofar as he or she is able. Under the *Act*, a worker must:

- work in compliance with the *Act* and regulations (section 28(1)(a));
- use or wear any equipment, protective devices or clothing required by the employer (section 28(1)(b));
- report to the employer or supervisor any known missing or defective equipment or protective device that may be dangerous (section 28(1)(c));
- report any known workplace hazard to the employer or supervisor (section 28(1)(d));
- report any known violation of the *Act* or regulations to the employer or supervisor (section 28(1)(d));
- not remove or make ineffective any protective device required by the employer or by the regulations (section 28(2)(a));[(9)]
- not use or operate any equipment or work in a way that may endanger any worker (section 28(2)(b)); and
- not engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct (section 28(2)(c)). Racing powered hand trucks in a warehouse or seeing who can pick up the most boxes are examples of unsafe and unacceptable workplace conduct.

7. The Right to Refuse Work

The *Occupational Health and Safety Act* gives a worker the right to refuse work that he or she believes is unsafe.

The *Act* sets out a specific procedure that must be followed in a work refusal. It is important that workers, employers, supervisors and health and safety representatives understand this procedure.

Do all workers have the right to refuse unsafe work?

Yes, but for some workers this right is limited. Certain workers who have a responsibility to protect public safety cannot refuse unsafe work if the danger in question is a normal part of the job or if the refusal would endanger the life, health or safety of another person. These workers are:

- police officers;
- firefighters;
- workers employed in correctional institutions; and
- health care workers employed in workplaces like hospitals, nursing homes, psychiatric institutions, rehabilitation facilities, residential group homes for persons with physical or mental handicaps, ambulance services, first-aid clinics, licensed laboratories--or in any laundry, food service, power plant or technical service used by one of the above (section 43(2)).

The following examples show how the right to refuse work applies to the above public sector workers.

Example 1

A police officer could not refuse to intervene in a robbery attempt on the grounds that the suspect was armed, and therefore the work dangerous. Nor could the officer refuse to police a particular area or location because it was considered dangerous. Such situations are an inherent part of the job.

However, a police officer *could*, before beginning a routine patrol duty, refuse to do so in a vehicle that had defective brakes.

Example 2

A correctional officer could not refuse to enter a jail corridor to intervene in an emergency, such as an altercation between inmates.

However, a correctional officer *could* refuse to participate in a staff training exercise which involved emergency equipment that the officer assessed to be unsafe.

Example 3

A firefighter could not refuse to perform a dangerous task while responding to any emergency.

A firefighter *could*, however, refuse to handle firefighting chemicals that were being improperly stored in the stationhouse.

Example 4

An experienced medical lab technologist could not, in the course of his or her regular work, refuse to handle a blood sample from a patient with an infectious disease.

But the technologist *could* refuse to test for a highly infectious virus where proper protective clothing and safety equipment are not available.

When can a worker refuse to work?

A worker can refuse to work if he or she has reason to believe that one or more of the following is true:

- Any machine, equipment or tool that the worker is using or is told to use is likely to endanger himself or herself or another worker (section 43(3)(a)).
- The physical condition of the workplace or work station is likely to endanger the worker (section 43(3)(b)).
- Any machine, equipment or tool that the worker is using, or the physical condition of the workplace, is in violation of the *Act* or regulations and is likely to endanger himself or herself or another worker (section 43(3)(c)).

What happens when a worker refuses unsafe work?

The worker must immediately tell the supervisor or employer that the work is being refused and explain why (section 43(4)).

The supervisor or employer must investigate the situation immediately, in the presence of the worker and one of the following:

- a joint committee member who represents workers, if there is one. If possible, this should be a certified member; or
- a health and safety representative, in workplaces where there is no joint committee; or
- another worker, who, because of knowledge, experience and training, has been chosen by the workers (or by the union) to represent them.

The refusing worker must remain in a safe place near the work station until the investigation is completed (section 43(5)). This interval is known as the 'first stage' of a work refusal. If the situation is resolved at this point, the worker will return to work.

What if the refusing worker is not satisfied with the result of the investigation?

The worker can continue to refuse the work if he or she has reasonable grounds for believing that the work continues to be unsafe (section 43(6)). At this point, the 'second stage' of a work refusal begins.[(10)]

What happens if a worker continues to refuse to work?

The worker, the employer or someone acting on behalf of either the worker or employer must notify a Ministry of Labour inspector, who will then come to the workplace to investigate (section 43(6)).

While waiting for the inspector, the worker must remain in a safe place near the work station, unless the employer assigns some other reasonable work during normal working

hours. If no such work exists, the employer can give other directions to the worker. If the worker is covered by a collective agreement, any provision in it that covers this situation will apply (section 43(10)).

The inspector must decide whether the work is likely to endanger the worker or another person. The inspector's decision must be given, in writing, to the worker, the employer, and the worker representative, if there is one. If the inspector finds that the work is not likely to endanger anyone, the refusing worker is expected to return to work (sections 43(8) and (9)).

Can another worker be asked to do the work that was refused?

Yes. While waiting for the inspector to investigate and give a decision on the refusal, the employer or supervisor can ask another worker to do the work that was refused. The second worker must be told that the work was refused and why. This must be done in the presence of a committee member who represents workers, or a health and safety representative, or a worker representative chosen because of knowledge, experience and training (sections 43(11) and (12)).

The second worker has the same right to refuse as the first worker.

Is a worker paid while refusing to work?

Although the *Act* does not cover this point, the Ontario Labour Relations Board has ruled that a refusing worker is considered to be at work during the first stage of a work refusal and is entitled to be paid at his or her appropriate rate.

A person acting as a worker representative during a work refusal is paid at either the regular or the premium rate, whichever is applicable (section 43(13)).

Can an employer discipline a worker for refusing to work?

No. A worker has the duty to work in accordance with the *Act* and the regulations and has the right to seek their enforcement. The employer is not allowed to penalize, dismiss, discipline, suspend or threaten to do any of these things to a worker who has obeyed the law (section 50(1)). This also applies if a worker has given evidence at an inquest or a prosecution under the *Act* or the regulations.

However, this provision does not apply if the work refusal was made in bad faith, or if the worker continues to refuse after the Ministry of Labour inspector finds that the work is not likely to endanger the worker.

What can a worker do if disciplined?

Any worker who believes he or she was unfairly disciplined by the employer may file a complaint with the Ontario Labour Relations Board (OLRB).

If the worker belongs to a union, he or she can choose instead to have the complaint dealt with under the grievance procedure in the collective agreement (section 50(2)).

Before doing either of the above, the worker or the employer has the option of contacting the Ministry of Labour, and an inspector will investigate. There is no requirement to contact the ministry.

In such cases, the inspector does not play an enforcement role, but is more of a conciliator. The inspector will discuss the alleged reprisal with the workplace parties and ensure that both the employer and the worker are aware of their duties and rights under the *Act*. The inspector cannot issue orders in an investigation of an alleged reprisal by the employer.

If the complaint is taken to the OLRB, the employer must prove that the discipline or other penalty imposed on the worker was the result of an improper refusal (section 50(5)). The OLRB has the power to remove or change any penalty imposed on the worker (section 50(7)).[(11)]

8. The Right to Stop Work

The *Occupational Health and Safety Act* allows dangerous work to be stopped.

In most cases, it takes two certified members to direct an employer to stop dangerous work (joint stoppage). One must be a certified member representing workers; the other, a certified member representing the employer. In some special cases, a single certified member may have this right. This chapter explains how and when work can be stopped.

Dangerous Circumstances

Work can be stopped only in 'dangerous circumstances' (section 44(1)).

This means a situation in which *all* of the following are true:

- the *Act* or the regulations are being violated; and
- the violation poses a danger or a hazard to a worker; and
- any delay in controlling the danger or hazard may seriously endanger a worker.

Limitations on the Right to Stop Work

The right to stop dangerous work does not apply to police, fire- fighters or those employed in correctional institutions (section 44(2)(a)).

The right to stop work does not apply to the following types of workplaces if a work stoppage would directly endanger the life, health or safety of another person (section 44(2)(b)):

- hospitals, nursing homes, psychiatric institutions, rehabilitation facilities or similar institutions;
- residential group homes for persons with physical, mental or behavioural handicaps;
- ambulance services or first-aid clinics or stations;
- medical testing laboratories;
- any laundry, food service, power plant or technical service or facility used by one of the above.

See section 43(2)(d) of the *Act* for a complete list of workplaces.

Joint Right to Stop Work

If a certified member has reason to believe that dangerous circumstances exist, he or she may ask a supervisor to investigate. The supervisor must do so promptly and in the presence of the certified member who made the request. This certified member may be one representing either the workers or the employer (section 45(1)).

What happens if the certified member is not satisfied with the supervisor's investigation?

If the certified member believes that dangerous circumstances still exist, he or she may ask another certified member to investigate (section 45(2)). The second certified member must do so promptly and in the presence of the first certified member (section 45(3)).

The second certified member must represent the other workplace party. For example, if the first certified member represents workers, the second must represent the employer.

In prescribed instances, a certified member who represents the employer but who is not available at the workplace may designate another person to act for him or her in a situation involving dangerous circumstances (section 45(9)).

What happens if both certified members agree that dangerous circumstances exist?

The certified members can direct the employer to stop the work or to stop using any part of the workplace or any equipment, machinery, tools, etc. (section 45(4)).

The employer must do so immediately, in a way that does not endanger anyone (section 45(5)).

After taking steps to remedy the dangerous circumstances, the employer can request the certified members who issued the stop-work direction, or an inspector, to cancel it (section 45(7)). Only the certified members who issued the direction can jointly cancel it, unless a ministry inspector cancels it (section 45(8)).

What if the certified members do not agree with each other that dangerous circumstances exist?

If the certified members disagree, work cannot be stopped.

However, either certified member may ask a ministry inspector to investigate. Following the investigation, the inspector will give a written decision to both certified members (section 45(6)).

Individual Right to Stop Work

The *Act* permits an individual certified member, in special cases, to stop work in dangerous circumstances. This individual right to stop work is granted by an official known as the health and safety adjudicator.

APPLICATION TO THE ADJUDICATOR

If any certified member in the workplace, or a ministry inspector has reason to believe that the joint right to stop work will not be sufficient to protect the workers from serious risk to their health or safety, he or she may apply to the adjudicator for a declaration against the employer (section 46(1)).

Any person applying to the adjudicator must notify both the employer and a director of the Ministry of Labour, in writing (section 46(2)).

At any time after the application has been made, the minister may appoint an inspector to try to reach a settlement between the applicant and the employer (section 46(4)).

ROLE OF THE ADJUDICATOR

The adjudicator must determine if the employer has failed to protect the health and safety of workers. In making a finding, the adjudicator is guided by criteria that are prescribed in a regulation (section 46(6)).

If the adjudicator finds that the procedure for joint stoppage of dangerous work is not sufficient to protect the workers, he or she may do one or both of the following:

- declare that the employer is subject to the procedure for individual stoppage of dangerous work (explained below) for a specified period (section 46(5)(a)); and/or
- recommend to the minister that an inspector be assigned, for a specified period, to oversee the health and safety practices of the employer. The inspector can be assigned on a part-time or full-time basis (section 46(5)(b)).

If an inspector is assigned to a workplace, the employer must reimburse the government for the wages, benefits and expenses of the inspector (section 46(8)).

The decision of the adjudicator on an application is final (section 46(7)).

PROCEDURE FOR THE INDIVIDUAL RIGHT TO STOP DANGEROUS WORK

This procedure applies to an employer against whom the adjudicator has issued a declaration. It also applies to an employer who has advised the joint committee, in writing, that he or she voluntarily adopts the following procedure (section 47(1)).

If a certified member finds that dangerous circumstances exist, he or she can direct the employer to stop work or to stop using any part of the workplace or any equipment, machinery, tools, etc. (section 47(2)).

The employer must do so immediately, in a way that does not endanger anyone (section 47(3)).

After stopping the work, the employer must promptly investigate, in the presence of the certified member (section 47(4)).

After taking steps to remedy the dangerous circumstances, the employer can ask the certified member, or an inspector, to cancel the direction (section 47(6)).

What happens if the certified member and the employer do not agree that dangerous circumstances exist?

In such a case, either party may ask an inspector to investigate. After conducting the investigation, the inspector will issue a written decision (section 47(5)).

Either the certified member or an inspector can cancel a stop-work direction (section 47(7)).

Responsible Use of the Right to Stop Work

Certified members are accountable for the responsible use of their authority to stop work in dangerous circumstances. They may be named in a complaint to the adjudicator that they recklessly or in bad faith exercised, or *failed to exercise*, their power to stop dangerous work.

Who may make a complaint about a certified member?

Any worker in the workplace, an employer or a representative of the union (if there is one) can file a complaint about a certified member (section 49(1)). The complaint must be filed not later than 14 days after the event that is the subject of the complaint (section 49(2)).

For example, an employer might complain to the adjudicator about a worker certified member who refuses to agree with the employer certified member to cancel a stop-work

direction after adequate remedial action had been taken. Or a union representative may complain that an employer certified member refused to agree to a stop-work direction in circumstances that were clearly dangerous. In either case, the complaint goes directly to the adjudicator.

What can the adjudicator decide?

The adjudicator decides whether the complaint is valid and can make any order that he or she considers appropriate. This decision could include an order to de-certify the certified member (section 49(4)).

The decision of the adjudicator is final (section 49(5)).

Are certified members paid while carrying out their duties?

The time spent by a certified member in carrying out duties is considered worktime. This includes any time spent in a stop-work situation or a work refusal. The certified member must be paid by the employer at the applicable rate (section 48(2)).

Can a certified member be disciplined by the employer?

Certified members are protected from employer reprisals in exactly the same way as workers who refuse unsafe work. If the member has acted in compliance with, or has sought the enforcement of, the *Act* or regulations, or has given evidence in a proceeding about the enforcement of the *Act*, he or she is protected from employer reprisals of any kind.

9. Toxic Substances

A toxic substance is a biological, chemical or physical agent (or a combination of such agents) whose presence or use in the workplace may endanger the health or safety of a worker.

Throughout the *Act* and regulations, the terms 'hazardous substances', 'hazardous materials' or 'hazardous agents' are all used to describe toxic substances. You can interpret any of these terms to mean 'toxic substances'.

The parts of the *Act* that deal with toxic substances have two purposes. One is to ensure that worker exposure to toxic substances is controlled. The other is to ensure that toxic substances in the workplace are clearly identified and that workers receive enough information about them to be able to handle them safely.

The *Act* also controls the introduction of new substances into the workplace.

As well, it gives the general public access to information about toxic substances used by industries in their community.

All of these requirements relating to toxic substances are described in this chapter.

The Control of Toxic Substances

There are three ways that worker exposure to toxic substances can be controlled under the *Act*.

1. DESIGNATED SUBSTANCE REGULATIONS

The *Act* allows a toxic substance to be 'designated', and its use in the workplace to be either prohibited or strictly controlled.

Designation is reserved for substances known to be particularly hazardous.

Eleven substances have been designated under the *Act*, including asbestos, lead, mercury and arsenic. Separate regulations have been passed for each one. In general, each regulation sets out the amount of the substance that workers can be exposed to in a given time period, and the ways to both control and measure the substance in the workplace.

More information on designated substances appears in a separate guide, available from the Ministry of Labour and the Ontario Government Book Store.

2. REGULATION TO CONTROL EXPOSURE TO BIOLOGICAL OR CHEMICAL AGENTS

The *Act* permits atmospheric conditions in the workplace to be controlled. The Regulation to Control Exposure to Biological or Chemical Agents sets limits in workplace air for approximately 600 toxic substances.

3. 'SECTION 33' ORDER

Section 33 of the *Act* permits a director to issue an order to an employer to either prohibit or restrict the presence, use or intended use of a toxic substance in the workplace (section 33(1)).

For example, the director may order that a toxic substance can be used only if the workers exposed to it wear specified protective equipment or receive exposure to it only for a specified period of time.

Section 33 orders can be issued to the self-employed.

What happens when a section 33 order is issued?

The employer must comply immediately with the order. The employer must also give a copy of the order to the health and safety committee or representative and, if there is one, the trade union.

The employer must also post a copy of the order in the workplace, where it is most likely to be seen by the workers who may be affected by the toxic substance (section 33(3)).

Can an employer appeal a section 33 order?

Yes. Within 14 days of the order being issued, an appeal in writing can be made to the minister. A worker or trade union can also appeal the director's order (section 33(4)).

The minister can appoint a person to hear the appeal (section 33(5)). This person has the power to suspend the order until a decision on the appeal has been made (section 33(9)). He or she can also confirm or change in any way the order of the director. His or her decision is final (section 33(7)).

Section 33 orders do not apply to designated substances (section 33(11)).

New Substances

The introduction of new substances into the workplace is controlled. Under the *Act*, a new substance is a biological or chemical agent that:

has *not* been used in any other workplace in Ontario; or

is *not* included in either the Chemical Substances Initial Inventory of May 1979 or the Cumulative Supplement of June 1980, published by the Environmental Protection Agency of the United States (section 34(3)).

What must happen if a new substance is going to be made or used in an Ontario workplace?

Anyone, including a self-employed person, who intends to manufacture, distribute or supply a new substance for commercial or industrial use in an Ontario workplace, must first notify a director in writing. This notice must identify the properties and ingredients of the new substance (section 34(1)).

This notice is not required if the substance is going to be manufactured, distributed or supplied for the purposes of research and development.

If the director is of the opinion that the introduction of the new substance may endanger the health or safety of workers, he or she can order the manufacturer, supplier or distributor of the substance to pay for an expert assessment of the substance (section 34(2)).

The Right to Know About Toxic Substances

The *Act* gives workers the right to know about toxic substances in the workplace. This right has always been part of the *Act*, but it was significantly expanded in 1988, when the

Act was amended as part of the Canada-wide implementation of the Workplace Hazardous Materials Information System (WHMIS).

The sections of the *Act* that implement WHMIS use the term 'hazardous materials' instead of toxic substances. Therefore, for the remainder of this chapter, which outlines the general duties of the employer under WHMIS, the term 'hazardous materials' is used.

Detailed requirements are set out in a separate WHMIS Regulation. More information about the WHMIS requirements in the *Act* and regulations appears in a separate guide, available from the Ministry of Labour and the Ontario Government Book Store.

EMPLOYER'S RESPONSIBILITIES CONCERNING

HAZARDOUS MATERIALS

An employer in charge of a workplace where hazardous materials are used has three main duties: to identify hazardous materials, to provide Material Safety Data Sheets and to train workers.

IDENTIFYING HAZARDOUS MATERIALS

The employer must ensure that all hazardous materials in the workplace are identified in a prescribed way (section 37(1)(a)).

In most cases, a detailed label is required on a container of a hazardous material. In some cases, however, a less formal means of identification is permitted. The WHMIS Regulation sets out how and when hazardous materials must be identified.

For hazardous materials that the employer buys from a supplier, the label/identification must be provided by the supplier. The employer is required to notify the Ministry of Labour in writing if, after making reasonable efforts such as telephoning and/or writing the supplier, he or she is unable to obtain proper labels (section 37(4)).

No one in the workplace can remove or deface the identification of a hazardous material (section 37(2)).

Where the identification of a hazardous material is in writing (rather than represented by colour coding or symbols, for example), it must be in English and any other prescribed languages (section 37(1)(c)).

PROVIDING MATERIAL SAFETY DATA SHEETS

The employer has a general duty to either obtain or prepare unexpired material safety data sheets (MSDSs) for hazardous materials in the workplace (section 37(1)(b)). 'Unexpired' means dated within the past three years (section 37(5)).

The information that an MSDS must include, along with some exemptions to this general duty, is defined by regulation.

For a hazardous material that the employer buys from a supplier, the MSDS must be provided by the supplier. If an employer is unable to obtain an MSDS from a supplier of a hazardous material, the employer is required to notify, in writing, a director of the Ministry of Labour (section 37(4)). For a hazardous material that the employer produces on site for use in the workplace, the employer must prepare the MSDS.

The employer is required to make copies of MSDSs readily available to workers, to the joint committee or to the health and safety representative, if any (section 38(1)). Wider distribution of MSDSs is discussed later in this chapter, in the section 'Public Access to Material Safety Data Sheets'.

The employer can make MSDSs available to workers on a computer terminal, provided the terminal is kept in working order and that appropriate computer training is given to exposed workers, to joint committee members or to the health and safety representative, if there is one. The employer must also provide workers with paper copies of MSDSs, on request (section 38(6)).

TRAINING WORKERS

The employer has a general duty to train workers who are exposed or are likely to be exposed to a hazardous material on the job (section 42(1)). Specific training requirements are set out in the WHMIS Regulation.

The employer must consult either the joint committee or a worker health and safety representative, if there is one, about the content and delivery of training programs (section 42(2)).

At least once a year, the employer, in consultation with the joint committee or a health and safety representative, must review the worker training program and determine the workers' familiarity with the information (section 42(3)). This review should take place more often than once a year if the employer, on the advice of the committee or representative, thinks it necessary (section 42(4)(a)). A more frequent review is also required if there is a change at the workplace that may affect the health or safety of a worker (section 42(4)(b)).

The requirement for a review of the training program is not an automatic requirement to retrain workers. The review is meant to identify whether updating of the training program and retraining of workers are necessary.

ASSESSMENT OF BIOLOGICAL AND CHEMICAL AGENTS

The *Act* places a general duty on the employer to determine whether a biological or chemical agent produced for use in the workplace is a hazardous material (section 39). Procedures are set out in the WHMIS Regulation.

In the *Act* and the WHMIS Regulation, the process of determining whether a material produced in the workplace is hazardous is called an 'assessment'. The assessment should be in writing and a copy made available to workers as well as given to the joint committee or a worker health and safety representative, if there is one (section 39(2)).

Employers subject to any of Ontario's designated substance regulations may be familiar with the term 'assessment'. The term has a different meaning in the WHMIS Regulation than in the designated substance regulations. Under WHMIS, an assessment refers only to deciding whether a product produced in the workplace is a hazardous material. In the designated substance regulations, an assessment refers to evaluating worker exposure to the designated substance.

PUBLIC ACCESS TO MATERIAL SAFETY DATA SHEETS

The *Act* provides for the distribution of MSDSs outside the workplace. Specifically, the following can request copies of MSDSs from the employer:

- the medical officer of health
- the local fire department
- the Ministry of Labour.

It is through the medical officer of health that the public has access to MSDSs. Any member of the public has the right to go to his or her local medical officer of health and ask to see a copy of any or all MSDSs for a workplace within the public health unit served by the officer. If the medical officer of health does not have available the pertinent MSDSs, he or she must obtain them from the employer (sections 38(2) and (3)).

The medical officer of health cannot disclose the name of any person asking to see an MSDS (section 38(4)).

INVENTORY OF HAZARDOUS SUBSTANCES

The *Act* places a general duty on employers to make an inventory of all hazardous materials and physical agents in the workplace, as prescribed by regulation (section 36(1)).

At present, no regulation exists that specifies what information should be put in an inventory. Therefore, until such a regulation is passed, employers do not have to prepare inventories of hazardous materials in the workplace.

FLOOR PLANS

The *Act* places a general duty on the employer to prepare a floor plan showing the names and locations of hazardous materials, *as prescribed by regulation* (section 36(7)). At present, there is no regulation requiring floor plans, which means that employers do not have to prepare them until such a regulation is passed.

CONFIDENTIAL BUSINESS INFORMATION

The *Act* protects confidential business information (section 40). The employer can file a claim with the 'claims board' to be exempted from disclosing information that is normally required on a label or MSDS if the employer believes it to be confidential business information.

The 'claims board' referred to in the *Act* is the Hazardous Materials Information Review Commission, which is an agency of the federal government.

Most of the requirements covering confidential business information are set out in other acts and regulations -- the *Hazardous Materials Information Review Act* and regulations, the Controlled Products Regulation and the Ontario WHMIS Regulation. For a full understanding of how such information is treated under occupational health and safety law, one must refer to these acts and regulations. A brief explanation of the requirements in these laws appears in the Ministry of Labour's *Guide to the WHMIS Legislation*. Detailed information is available from:

The Hazardous Materials Information Review Commission Suite 400, 66 Slater Street, Ottawa, Ontario KlA 0C9 Telephone: (613) 993-4331.

HAZARDOUS PHYSICAL AGENTS

The requirements for labels, material safety data sheets and training apply to chemical and biological agents only, not to physical agents. Physical agents are things like noise, heat, cold, vibration and radiation.

The *Act* allows for regulations to be passed that would require both the suppliers of equipment that produces a hazardous physical agent and the employers who use such equipment to provide specific information about the agent (section 41). At present, no such regulation exists. There is, however, a general duty on the employer to acquaint a worker and a supervisor with any hazard related to a physical agent in the workplace.[(12)]

10. Workplace Health and Safety Agency

The Workplace Health and Safety Agency was established in 1990 to give the workplace parties a greater share in the direction of training, consultative work, promotion and research in support of occupational health and safety in Ontario (section 13(1)).

The agency is jointly run by representatives of management and labour (section 13(2)). The joint structure of the agency reinforces one of the main principles underlying the *Act*:

the need for a partnership among the workplace parties in order to improve occupational health and safety.

The main functions of the agency are outlined below.

Certification of Joint Committee Members

The agency has the responsibility to set the requirements or standards that must be met in order for a joint committee member to become certified (section 16(1)(a)). In addition, the agency has the power to set up and run the certification process, including the training and certification of joint committee members (sections 16(1)(b) and (c)).

Education and Training

The agency has the authority to develop, deliver and fund training programs related to occupational health and safety. In doing so, the agency may work with other organizations, such as community colleges, safety associations and worker training centres (sections 16(1)(d) and (e)).

The agency also has the authority to fund and set standards for first-aid training (section 16(1)(h)).

Health and Safety Training Centres, Clinics and Safety Associations

The agency has the power to oversee the operation of any health and safety clinic, training centre and accident prevention association prescribed by regulation (section 16(1)(n)). It can also provide grants or funds to any of these organizations (section 16(1)(o)).

Employer Accreditation

The agency can accredit employers with successful health and safety programs. It can also revoke the accreditation if an employer does not continue to meet the standards for accreditation set by the agency (sections 16(1)(i) and (j)).

Other Functions

Other functions of the Workplace Health and Safety Agency are:

- to fund occupational health and safety research (section 16(1)(g));
- to advise the Minister of Labour about matters related to occupational health and safety (section 16(1)(m)); and
- to promote public awareness of occupational health and safety (section 16(1)(f)).

Small Business Advisory Committee

The *Act* requires the agency to set up an advisory committee that has equal numbers of representatives from management and labour in the small business community (section 16(7)). The purpose of this committee is to advise the agency on cost-effective ways to carry out training in small businesses.

11. Enforcement

Workplace inspections are carried out to ensure compliance with the *Act* and regulations and to ensure that the internal responsibility system is working. Inspections also provide the workplace parties with access to the special knowledge and expertise in occupational health and safety available from the Ministry of Labour, through inspectors.

This chapter describes how Ontario's occupational health and safety laws are enforced.

How often are inspections conducted?

It depends on the type of workplace, its size and its past record of health and safety. For example, construction projects may be inspected every three or four weeks; a factory may be inspected as problems arise; and a mine may be inspected about three times a year.

Inspections may also be conducted in response to a specific complaint about a workplace. Such complaints are kept confidential.

The inspection involves a thorough examination of the physical condition of the workplace by the inspector, who is usually accompanied by both employer and worker representatives.

What are the powers of an inspector?

To carry out his or her duties, the inspector has the authority to:

- enter any workplace without a warrant or notice (section 54(1)(a));
- question any person, either privately or in the presence of someone else, who may be connected to an inspection, examination or test (section 54(1)(h));
- handle, use or test any equipment, machinery, material or agent in the workplace and take away any samples (sections 54(1)(b) and (e));
- look at any documents or records and take them from the workplace in order to make copies (sections 54(1)(c) and (d));[(13)]
- take photographs (section 54(1)(g));
- require that any part of a workplace, or the entire workplace, not be disturbed for a reasonable period of time in order to conduct an examination, inspection or test (section 54(1)(i));
- require that any equipment, machinery or process be operated or set in motion or that a system or procedure be carried out that may be relevant to an examination, inquiry or test (section 54(1)(j));

- look at and copy any material concerning a worker training program (section 54(1)(p));[(14)]
- direct a joint committee member representing workers, or a health and safety representative, to inspect the workplace at specified intervals (section 55);
- seize anything that is either given to the inspector or is in plain view, if the inspector believes it is evidence of a violation of the *Act* or regulations (section 56(1));[(15)]
- require the employer, at his or her expense, to have an expert test and provide a report on any equipment, machinery, materials, agents, etc. (section 54(1)(f));
- require the employer, at his or her expense, to have a professional engineer test any equipment or machinery and verify that it is not likely to endanger a worker (section 54(1)(k)); and stop the use of anything, pending such testing (section 54(1)(l));
- require an owner, constructor or employer to provide, at his or her expense, a report from a professional engineer that assesses the structural soundness of a workplace (section 54(1)(m));
- require the owner of a mine to provide, at his or her expense, an official report from a professional engineer that the ground stability, mining methods and support or rock reinforcement are such that a worker is not likely to be endangered (section 54(1)(n));
- require an employer, manufacturer, producer, importer, distributor or supplier to provide information about any process or agent used in a workplace, or intended to be used there, and about the manner of its use, including any information on:

  - the ingredients, composition and properties of the agent;

  - the toxicological effects of the agent;

  - the effects when exposed to skin, when inhaled or when ingested;

  - the protective and emergency measures that are or will be used in the event of exposure; and

  - the effect of the use, transport and disposal of the agent (section 54(1)(o)).

Who can accompany the inspector?

In addition to persons selected by the employer, a worker representative should accompany the inspector. This person may be a worker member of the joint committee, a health and safety representative, or another knowledgeable and experienced worker (selected by the union, if there is one) (section 54(3)). This worker is considered to be at work during the inspection and must be paid at the applicable rate of pay.

If there is no such worker representative, during the inspection the inspector must talk to a reasonable number of workers about their health and safety concerns (section 54(4)).

The inspector can also be accompanied by a person with special, expert or professional knowledge. For example, an inspector may bring an engineer into a workplace to test machinery for purposes of operator safety (section 54(1)(g)).[(16)]

EVERYONE IN THE WORKPLACE IS EXPECTED TO CO-OPERATE

Every person must do everything in his or her power to assist an inspector in the performance of his or her duties under the *Act* (section 62(1)).

It is a violation of the *Act* to interfere in any way with an inspection. This includes giving false information, failing to give required information or interfering with any monitoring equipment left in the workplace.

Inspector's Orders

The inspector prepares a report and may make recommendations for improved health and safety practices. Where there are violations of the *Act* or the regulations, the inspector will issue written orders to the employer to comply with the law within a certain time period or, if the hazard is imminent, to comply immediately. An inspector's order can require the employer to submit a plan to the ministry, specifying when and how he or she will comply with the order.

Where an order has been made to correct a violation of the *Act* or regulations, and the violation in question is dangerous to the health or safety of a worker, the inspector may also order that:

- any place, equipment, machinery, material, process, etc., not be used until the violation has been corrected (section 57(6)(a));
- the work be stopped (section 57(6)(b));
- the workplace be cleared of workers and access to the workplace be prevented until the hazard is removed (section 57(6)(c)). No worker can be required or permitted to enter the workplace except to remove the hazard, and then only if the worker is protected from the hazard (section 58);
- any hazardous chemical, physical or biological agent not be used (section 57(8)).

Where the inspector has stopped work, the employer may resume work, or the use of any equipment, machinery, etc., before a further inspection under the following two conditions:

- the employer has notified an inspector that the order has been complied with; and
- a joint committee member representing workers or a health and safety representative advises an inspector that, in his or her opinion, the order has been complied with (section 57(7)).

EMPLOYER'S NOTICE OF COMPLIANCE WITH AN ORDER

If an inspector has issued an order to an employer to remedy a violation of the *Act* or regulations, the employer must send written notification to the ministry within three days of when the employer believes the order has been complied with (section 59(1)).

This notice must be signed by the employer. It must also be accompanied by a signed statement from a worker member of the joint committee or a health and safety representative, indicating that he or she agrees or disagrees with the employer's notice of compliance with the order (section 59(2)(a)).

The committee member or representative can, for any reason, decline to sign such a statement. One reason might be that the member or representative may feel that he or she cannot properly evaluate the employer's compliance with the order. In such a case, the employer must submit, along with the compliance notification, a statement that the member or representative declined to sign the statement of agreement or disagreement (section 59(2)(b)).

The employer must post copies of both the notice of compliance and the original order in a place where they are most likely to be seen by workers. The notice must appear for 14 days (section 59(3)).

The employer's notice of compliance to the ministry does not mean that compliance with an order has been achieved. This can be determined only by an inspector (section 59(4)).

POSTING ORDERS AND REPORTS IN THE WORKPLACE

When an inspector issues an order or a report of the inspection, a copy of the order or report must be posted in the workplace, where it is most likely to be seen by the workers. A copy must also be given to either the joint health and safety committee or the health and safety representative (section 57(10)).

Can an inspector's orders be appealed?

Yes. Anyone, including a worker or a union, who is affected by an inspector's order can appeal to the occupational health and safety adjudicator within 14 days of the order being issued (section 61(1)). One can also appeal an inspector's decision not to issue an order (section 61(5)).

An appeal to the adjudicator can be made orally, in writing or by telephone. However, the adjudicator can require that, before the appeal is heard, the grounds for the appeal be presented in writing (section 61(2)).

The adjudicator will hear and make a decision on the appeal as promptly as possible under the circumstances. The adjudicator has the power to suspend an inspector's order until a decision on the appeal has been made.

In making a decision, the adjudicator has all the powers of an inspector and can uphold the order of the inspector, rescind it or issue a new order.

The decision of the adjudicator is final.

Workplace Investigations

What is an investigation?

When a workplace is the site of a serious or fatal accident, an unusual occurrence or a refusal to work, an investigation may be conducted.

Investigations are conducted by a ministry inspector, who is normally accompanied by a representative of the employer and a representative of the workers.

While conducting an investigation, an inspector has all of the powers described earlier in this chapter. Everyone in the workplace is required to cooperate with an inspector during an investigation.

THE SCENE OF A CRITICAL OR FATAL ACCIDENT

If a person is critically injured or killed at a workplace, no person can alter the accident scene in any way without the permission of an inspector.

This does not apply if it is necessary to disturb the scene in order to:

- save a life or relieve human suffering;
- maintain an essential public utility service or public transportation system; or
- prevent unnecessary damage to equipment or other property (section 51(2)).

Offences and Penalties

The ministry may prosecute any person for a violation of the *Act* or the regulations, or for failing to comply with an order of an inspector, a director or the minister (section 66(1)).

In deciding whether to prosecute, the ministry will take into account the seriousness of the offence and whether there have been repeated violations or ignored orders.

If convicted of an offence under the *Act*, an individual can be fined up to $25,000 and/or imprisoned for up to 12 months. The maximum fine for a corporation convicted of an offence is $500,000 (sections 66(1) and (2)).

1. *Throughout this guide, the word 'employer' generally includes 'constructor'. In many cases, 'constructor''has been left out to make the guide easier to read. Sections of the Act or regulations that apply only to constructors will be explained as they arise.*

2. *This information can also be requested by the employer, an individual employee, a union or a health and safety representative.*

3. *The requirement to have certified members on joint committees was added when the Act was amended in 1990. This requirement will be phased in, and it is expected to take some time before all joint committees in Ontario have certified members. If there is any question about when the joint committee in your workplace must have certified members, contact your nearest Ministry of Labour office.*

4. Employers may appoint themselves as supervisors if they meet all three qualifications (section 25(3)).

5. The definition of 'underage' worker or person varies according to the workplace. For example, a person must be at least 18 years old to work in an underground mine; 16 years old to work on a construction project or in a logging operation; 15 to work in a factory; and 14 to work in any other workplace, such as a restaurant, store or office. These and other minimum age requirements are set out in various safety regulations under the Act.

6. This provision does not apply to workplaces that regularly employ five or fewer workers.

7. Where the law requires a medical surveillance program, employers must offer it to workers. Workers do not have to participate in such a program; they must agree to do so voluntarily (section 28(3)). (Workers must take safety-related medical examinations, such as the ones required for hoist operators.) If a worker participates in a medical surveillance program the employer must pay the costs, including the worker's reasonable travelling costs (section 26(3)). The worker is considered to be at work during the time spent undergoing the examinations or tests and must be paid at the regular or premium rate, whichever is applicable. (Section 26 (3)(c)).

8. Self-employed people are required to notify a director of the Ministry of Labour, in writing, if they sustain an occupational injury or illness.

9. The only exception to this rule is if one can provide an adequate temporary protective device. Once there is no longer a need to remove the required protective device or to make it ineffective, it must be replaced immediately. For example, it may be necessary to remove a protective device on a saw in order to cut an unusually large piece of material. In such a case, no one may operate the saw until it has a temporary protective device that will prevent injury. After this operation is complete, the saw's regular protective device must be immediately replaced.

*10. * `Reasonable grounds' for continuing to refuse means that the worker has some objective information that makes him or her believe the work is still unsafe. The worker does not have to be correct in his or her knowledge or belief. For example, the refusing worker may have been told by other workers who have used a lift truck that the brakes sometimes fail.*

*11. * Workers who are covered by a code of discipline under the Police Services Act must have any complaint about unfair discipline dealt with under that Act (section 50(8)).*

*12. * The provisions of the Act covering identification of hazardous materials, MSDSs, assessments, public access to MSDSs, inventories, floor plans, trade secrets and hazardous physical agents also apply to self-employed persons.*

13. The inspector must provide a receipt for the removed documents and return them promptly after making copies.

14. An inspector also has the right to attend any training program.

15. The inspector can either remove the item seized or leave it at the workplace. He or she must tell the person from whom it was taken the reason for the seizure and provide a receipt. The inspector must also bring the evidence seized before a provincial judge or justice of the peace. If that is not possible--for example, in the case of a seized bulldozer--the inspector must inform a judge or justice of the seizure.

16. Any information obtained from the workplace by an inspector, or by anyone accompanying the inspector, is considered confidential. It cannot be disclosed to anyone unless it is necessary to do so under the Act, the regulations or some other law.