Alberta OHS legislation changes: What owners and prime contractors need to know

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Recently, amendments were introduced to the *Occupational Health and Safety Act* (OHS Act).[1] The Alberta government has indicated that the purpose of the amendments were to clarify the OHS Act by eliminating duplication and simplifying its language. The Alberta OHS legislation changes will directly affect owners' and prime contractors' obligations under the act.

Owners

Under the OHS Act, an "owner" is the person who is registered as the owner of the land on which work is being carried out or the person who enters into an agreement with the owner to be responsible for meeting the owner's obligations under the OHS Act.[2] While the definition of "owner" has not been changed as a result of the amendments, owners' obligations pursuant to the OHS Act have been expanded. In particular, owners are now obligated to "ensure, as far as it is reasonably practicable to do so, that the land, infrastructure and any building or premises (collectively, the Premises) on the land is provided and maintained in a manner that does not endanger the health and safety of workers or any other person." This now applies regardless of whether or not the owner is in control of the Premises.[3] This provides a greater level of responsibility than was previously required.

Prime Contractors

Under the OHS Act, the definition of "Prime Contractor" generally refers to the person in control of the work site or the person designated as the Prime Contractor by the person in control of the worksite.[4] Following the amendments, Prime Contractors are still required on every multi-employer work site in the construction and oil and gas industries. However, the OHS Act now includes definitions of a "construction work site" and an "oil and gas work site" which provides some additional clarity.[5]

In addition, *any* multi-employer industry may voluntarily designate a Prime Contractor. Changes to the OHS Act were in response to implement flexibility as required at complex work sites with shifting activities and transient work site parties.[6]

The amendments to the OHS Act also impact the health and safety obligations for Prime Contractors at work sites. With these changes, the current OHS Act mandates that:

- Projects that ***have a Prime Contractor*** do **not** also require a joint health and safety committee (HSC) or a health and safety representative (HS). However, the Prime Contractor must designate a health and safety contact and the Prime Contractor must assume responsibility for the matters[7] that would have been addressed by an HSC.[8] The Prime Contractor must also designate a person to ensure cooperation between employers and workers. Note that this does not impact an employer's obligation to have an HSC or HS.
- Multi-employer work sites that do ***not have a Prime Contractor***:
    - are required to have an HSC when they have 20 or more regularly employed workers or employees;[9]or
    - are required to have an HS when they have 4-19 regularly employed workers.[10]

Health and safety programs and training

The changes to Alberta's OHS legislation have also clarified obligations related to health and safety programs and training for health and safety committee members or representatives.

As far as health and safety programs, employers and workers will have more flexibility to develop programs that best suit their work place. The amendments to the OHS Act remove mandatory elements for the health and safety programs.

Similarly, as far as training, employers and workers will have more flexible options for training and it can be tailored to suit individual workplace needs. Training requirements are expanded to include committee members as well as committee co-chairs and representatives (except for farms and ranches). There is no longer a requirement for government approved training courses or training providers.

Potentially serious injury reporting

The amendments to the OHS Act have also clarified the obligations related to potentially serious injury reporting. The OHS Act gives the two criteria that define a reportable potentially serious incident.

These are:

- the incident had a likelihood of causing a serious injury or illness; and
- there is reasonable cause to believe that corrective action may need to be taken to prevent recurrence.

Potentially serious incidents[11] must still be investigated and reported by the Prime Contractor (or employer if there is no Prime Contractor) although the reporting process has been simplified.[12] The immediate reporting of potentially serious incidents is no longer required and the potentially serious incident reports are to be submitted after an investigation is complete. OHS has also indicated that potentially serious incident

reports will be used for information and education purposes and won't result in remedial inspection in most cases. OHS may follow up if there is evidence of a current or ongoing serious health and safety concern.[13]

Summary

The amendments to the OHS Act have resulted in changes which will impact owner and prime contractor obligations. It is important for owners and prime contractors to review the amendments in order to ensure they are aware of their obligations related to health and safety.

BLG regularly acts for owners and prime contractors on work sites and regularly provides advice on health and safety obligations in Alberta. If you have any questions regarding the amendments to the OHS Act, reach out to the authors or any of the contacts listed below.

Footnotes

[1] SA 2020, c O-2.2 [OHS Act].

[2] OHS Act, s 1(hh).

[3] OHS Act, s 9(1).

[4] OHS Act, s 10(2) and (3).

[5] OHS Act,s 1(e): "**construction work site**" means a work site where any of the following activities are conducted:

- the building, demolition, repair, alteration, extension or renovation of a structure;
- site development or building and repair of roads, highways, pipelines, sewage systems, drainage systems, electrical transmission lines or systems or telecommunication transmission lines or systems;
- digging, working in or filling a trench or excavation; or
- land clearing, earth moving, grading, boring, drilling, abrasive blasting or concreting.

OHS Act, s 1(gg): "**oil and gas work site**" means a work site where any of the following activities are conducted:

- oil and gas development, production, refining and processing;
- the drilling and mining of, completion, recompletion or remedial treatment of an oil or gas well;
- the supplementary operation performed or service provided that is necessary to the drilling of an oil or gas well;
- work performed with a mobile workover or completion service rig;
- geophysical operations in relation to oil and gas;
- construction and upgrading of oil and gas infrastructure;

- oil and gas pipeline construction and operation;
- oil and gas site abandonment, remediation and reclamation; or
- bitumen and in situ heavy oil recovery.

[6] Change highlights: the 2020 OHS Act at 3.

[7] These duties include: addressing health and safety concerns of workers, participating in the employer's hazard assessment, making recommendations to the employer about the health and safety of workers, reviewing the employer's work site inspection documentation (Change highlights: the 2020 OHS Act at 1).

[8] OHS Act, s 13(3), 14(3).

[9] OHS Act, s 13(1)(a).

[10] OHS Act, s 14(1)(a).

[11] OHS Act, s 33(5). Potentially serious incidents are those incidents where: (a) the incident had a likelihood of causing a serious injury or illness; and (b) there is reasonable cause to believe that corrective action may be needed to prevent recurrence.

[12] OHS Act, s 33(5).

[13] Change highlights: the 2020 OHS Act at 5.

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