The New Occupational Health and Safety Code - Bill C-45

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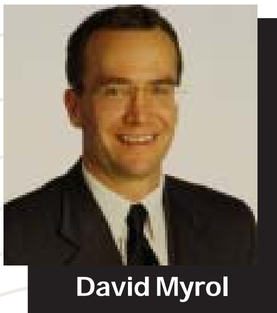
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The Provincial Government has nearly completed its reform of Occupational Health and Safety law in Alberta. The final step in the process will occur on April 30, 2004, when the new *Occupational Health and Safety Code* comes into force.

The new *OHS Code* has wide ranging implications for businesses and workers in Alberta, and unless you are a farmer, rancher, nanny, or a federal government employee, the new *OHS Code* will likely affect you in some way.

The new *OHS Code* has also generated debate within Occupational Health and Safety circles, not only with respect to specific sections of the new *OHS Code*, but also whether it has gone too far – or not far enough. Whatever your personal view, the fact remains that on April 30th of this year, the new *OHS Code* becomes the law in this Province. It will not help to say you were unaware of the changes – no matter how sincere you are – ignorance of the law will not be a defence for failing to comply.

The new *OHS Code* sets out the minimum safety requirements expected for your workplace. It repeals most of the old *Occupational Health and Safety Regulations* (11 of them) and establishes new technical requirements and standards that workers and businesses must follow in Alberta.

However, the new *OHS Code* is more than an amalgamation of the old regulations. The previous amendments to the *OHS Act* (in December of 2002), allowed the Minister and OHS Council to make new rules about the technical requirements and standards for work sites. The authors of the new *OHS Code* have updated the old regulations, revised them, modernized them, strengthened them and added to them. The new requirements are very different and businesses should guard against assuming the new *OHS Code* is a consolidation of the old regulations.

Some of the new changes are subtle but important and will likely catch many by surprise. For example, section 7 of the new *OHS Code* requires an employer to conduct a hazard assessment of the work to be performed at the work site. The concept of a hazard assessment is nothing new to Occupational Health & Safety specialists; many workers practice it intuitively as good common sense and many employers have already built this concept into their safety programs. However, the new section requires much more than buying into the idea at a general level. The section identifies specific things that must be done in order to comply with the *OHS Code* and these technical requirements might catch the unwary off-guard and expose them to unnecessary liability.

The hazard assessment provisions require the employer to prepare a written report of the results of the hazard assessment, detailing both existing and potential hazards, as well as identifying the methods used to "control" or "eliminate" the identified hazards. The date of the assessment, as well as any

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revision, must also be recorded on the report. The assessment must be "repeated at reasonably practicable intervals", or whenever a new "work process is introduced", whenever a "work process or operation changes", or "before the construction of a new work site". In addition, an employer must also involve affected "workers" in the hazard assessment where practicable, as well as informing affected workers of the hazards and the means by which they are to eliminate or control the hazards – first by "engineering controls", and then by "administrative controls" that will control the hazard to a level as low as reasonably achievable.

Some of the pitfalls to these technical requirements are obvious. For example, failing to conduct a hazard assessment itself, failing to prepare a written report of the hazard assessment, failing to detail the methods of eliminating or controlling the hazard, and failing to date the report. A failure in any of these obvious requirements increases the chances of a prosecution – especially in the face of a fatality or serious injury. Whether a conviction would result (and there are defences to these violations) depends upon the circumstances of the case. However, these new requirements make the job of employers and workers much more difficult and the job of the prosecutor much easier.

Some of the other pitfalls of hazard assessments are not so obvious. For example, section 7 uses the term "employer" to describe the party that is responsible for ensuring that hazard assessments are conducted at the work site (in accordance with the *OHS Code).* A quick review of this section could lead to the wrong impression that hazard assessment obligations are the sole responsibility of the "employer". However, if a prime contractor is required for a work site1, the *OHS Code* is clear that the prime contractor is responsible for ensuring compliance with the *OHS C*ode; in particular, the design, construction, erection or installation of equipment "<u>as if the prime contractor were the employer</u>".2 What this means is that the prime contractor, at a minimum, will need to establish a system or process to ensure that the specific requirements of hazard assessments are not only met at the work site, but that they continue to be met at the work site. If the system or process of the prime contractor fails to achieve this objective or fails to continue to achieve this objective, as far as reasonably practicable, then the prime contractor may also be liable and subject to prosecution.

This extension of liability to prime contractors should also be of concern to "owners" because under the *OHS Act,* an "owner" of a work site (assuming the work site requires a prime contractor) may become the "prime contractor" by default. This can occur when there is "no agreement" about who will be the "prime contractor", or the agreement is not "in force" at the time of the accident, or the agreement does not apply to the "work site" where the accident occurred. Accordingly, if there are two or more employers involved in work at the work site at the same time, the "owner" of the work site may be unaware that he or she is the "prime contractor", and by extension, may be unaware that he or she is responsible to ensure that the hazard assessment requirements are being met. A practical example of this situation might occur on a construction project where the owner wrongfully assumes that the contractor's workers are employees when in fact they are self-employed sub-contractors, and as such, by definition, the "owner" would be the prime contractor with all of the attendant responsibilities.

This is one small illustration of the difficulties and challenges posed by the new *OHS Code*. With over four hundred pages of legislation, 75 pages of Schedules and Tables, and over 125 separate Standards adopted or referenced in the Code, the scope and magnitude of this change is profound.

(Footnotes)

1 A prime contractor is required for a work site whenever there are 2 or more employers involved in work at the work site at the same time. See section 3(1) of the *OHS Act.*

2 See section 2(1) of the *OHS Code.*

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