

New rules, new law affect workplace health and safety

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New provincial legislation and new rules from the Ministry of Labour are changing the work of occupational health and safety activists.

- Effective March 1, 2016, the Ministry of Labour (MOL), at the direction of Ontario's Chief Prevention Officer (CPO), has made changes to the certification requirements for members of local Joint Health and Safety Committees (JHSCs).
- In March 2016, the government passed Bill 132, the *Sexual Violence and Harassment Action Plan Act*. The bill amends laws related to sexual violence, sexual harassment, domestic violence, and related matters. The changes to the *Occupational Health and Safety Act* (OHS) take effect on September 9, 2016.

These two important changes are explained below.

1. New health and safety certification requirements

As of March 1, 2016 the Ministry of Labour (MOL), at the direction of Ontario's Chief Prevention Officer (CPO), has made changes to the certification requirements for members of local Joint Health and Safety Committees (JHSCs).

Transitioning to the new standards

JHSC members who were certified under the 1996 standard prior to February 29, 2016 continue to remain certified and nothing has changed.

- Employers with JHSC members who had taken Part One and Two under the 1996 standard but had not received their certificate were required to provide proof of training to the MOL by April 30, 2016.
- Members who had completed Part One training only prior to February 29, 2016 were required to complete Part Two training under the new standard and take the refresher course every three years.
- Joint Health and Safety Committee members who have not yet been certified or have received certification training after February 29, 2016 are required to take Part One and Part Two

certification training using the new standards and delivered by an approved training provider. A refresher course will be required every three years.

- The certification training requirement has been increased from three days to five days and Part Two training must be taken within six months of Part One. A one-day refresher course must be taken every three years to maintain a valid certification.

New certification training explained

Part One training includes: an overview of the Occupational Health and Safety Act (OHSA); the role of JHSCs; the rights, duties and responsibilities of the workplace parties; an introduction to the concepts of hazard recognition; assessment; hazard control; control evaluation; and other health and safety resources. Part One now requires at least 19.5 hours of instruction (3 days), of which 6.5 hours (1 day) may be delivered by e-learning.

Part Two training includes: instruction on the concepts and application of the recognition, assessment, control and evaluation (R.A.C.E.) model for workplace hazards; instruction on how to apply these concepts to a minimum of six hazards relevant to the workplace; and practice drafting action plans and JHSC recommendations for the employer. The minimum duration of Part Two is now 13 hours (2 days).

Within six months of completing Part One, members may apply for a one-time six-month extension in order to complete Part Two of the training. Extension requests are not recommended unless there are extenuating circumstances.

Refresher Training includes: review of key Part One and Part Two components; best practices throughout health and safety; and legislative standards and code updates as required. Refresher training requires one full day.

OPSEU's preferred training provider – the Workers Health and Safety Centre

OPSEU's preferred approved training provider is the Workers Health and Safety Centre (WHSC). We encourage all locals to seek to have certification training provided through the WHSC.

OPSEU has an agreement with the Ontario Public Service that in all ministries, at least Part One of certification training shall be delivered by the WHSC. In certain ministries the agreements include WHSC delivery of Part Two and specify the modules to be included. These agreements remain unchanged.

For information on training, click here: <https://www.whsc.on.ca/Home>

Step-by-Step JHSC certification process

Step One

- Complete Part One training.
- Extension Request possible (not recommended unless there are extenuating circumstances). Within six months of completing Part One certification training, the committee member may apply for a one-time six-month extension to complete Part Two certification training.

Step Two

- Complete Part Two training within six months of completing your Part One training or within one year if an extension is granted by the Chief Prevention Officer.
- If Part Two is not completed within three years of taking Part One certification training then the member must take a refresher course prior to completing Part Two certification.
- If Part Two training is not completed after three years of taking Part One certification training then Part One certification must be taken again prior to taking Part Two Certification training.

Step Three – Refresher training

- Within three years of completing Part One and Part Two training (becoming certified), complete a one day refresher course delivered by an approved training provider. The JHSC is no longer certified if the refresher course is not completed.

Refresher training three-year exemption

- The joint health and safety committee member may request that the Chief Prevention Officer grant a one-time three-year exemption for refresher training. The member must have been a JHSC member within the last twelve months and must apply for the exemption within three years of becoming certified or taking their last refresher course.

For full details on the new standards please click here:

http://www.labour.gov.on.ca/english/hs/pubs/jhsc_prog/index.php

2. Bill 132: The *Sexual Violence and Harassment Action Plan Act* amends harassment provisions in the *Occupational Health and Safety Act (OHSA)*

On March 6, 2015, the Ontario government released *It's Never Okay: An Action Plan to Stop Sexual Violence and Harassment*. The statement comes directly from the preamble to Bill 132, the *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)* which received Royal Assent on March 8, 2016. The bill makes the following changes:

Definition of harassment amended to include sexual harassment

The definition of workplace harassment is amended to include workplace sexual harassment. The new definition of workplace sexual harassment includes a provision specifically aimed at people in positions of authority.

Workplace harassment means:

- (a) engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or*
- (b) workplace sexual harassment.*

Workplace sexual harassment means:

- (a) engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or*
- (b) making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.*

Additional employer responsibilities

The new amendments place more emphasis on employer requirements. Employers must:

- consult with the local Joint Health and Safety Committee (JHSC) or health and safety representative in developing the program for harassment;

- provide information and instruction to all workers regarding the policy, controls and any other required information;
- develop measures and procedures to report harassment to someone other than the employer if the employer is the alleged harasser;
- describe how information will not be disclosed until necessary to investigate or take corrective action;
- conduct investigations that are appropriate in the circumstances;
- give workers (and the alleged harasser if an employee) the results of the investigation in writing and information on any corrective action taken; and
- review the program at least annually.

New enforcement tools for MOL Inspectors

Under the amendments a Ministry of Labour (MOL) inspector can order that the investigation be conducted by an impartial person at the expense of the employer. The inspector can also specify the knowledge, experience or qualifications of the person and require that a written report be provided by that person at the expense of the employer.

No disclosure of reports to JHSC and health and safety representatives

The results of investigations or reports required under these provisions are excluded as reports that need to be provided the JHSC or a health and safety representative in accordance with the OHS sub-section 25(2).

However, OPSEU advises JHSCs and health and safety representatives to request to receive anonymized information regarding the number and types of open, ongoing and closed investigations, the number of incidents and/or complaints, general outcome information, any initiatives or programs the workplace undertakes, harassment prevention controls, data about implementation and effectiveness of the policy and other relevant information.

For a detailed look at the Bill and the other legislation that it amends click here:
<https://www.ontario.ca/laws/statute/S16002#sched4s1s1>