



April 5, 2018

Transmitted via email to: lbr.review@gov.ab.ca

RE: Submission in response to proposed regulation content: workplace harassment and violence; JWSHSCs and Health and Safety Representatives

The Alberta Construction Association thanks the Government of Alberta for the opportunity to provide this submission in response to the regulatory proposals. ACA represents 3200 unionized and non-union member firms operating across Alberta. One in nine working Albertans are employed in the construction industry.

Harassment and Violence

Harassment Prevention

The regulations should clarify that harassment should not be considered arising from employers addressing employee performance issues.

The regulation should clarify that employer responsibilities for reporting, investigation, and documentation arise after the employer becomes aware of the harassment.

The regulation should allow time for the development of the policy in consultation with the JWSHSC which may be delayed given the time required to successfully implement the JWSHSC and train its members. The regulation should clarify whether a separate policy is required for each of harassment and violence, or whether these can be combined.

The regulation should oblige the employer and worksite JWSHSCs to also ensure privacy of the complainant and alleged offender, through for example, signing Codes of Ethics and Conduct.

Will the regulation clarify whether the counselling can be provided through the public health care system? How can the Government assure timely counselling through the public system?

Counselling considered time at work. Would this be an unlimited amount of time? How would employer ensure the counselling remains focused? Will the regulations clarify whether services are employer-provided or WCB provided?

Will the regulations clarify whether the training may be done by an industry approach, rather than an employer approach?

Violence Prevention

The regulation should clarify that the actions and measures the employer will take are limited to eliminating or controlling the risk of violence in the workplace.

The regulation should clarify that employer responsibilities for reporting, investigation, and documentation arise after the employer becomes aware of the incident. Victims of domestic violence may fail to consistently exhibit the signs of domestic violence.

The regulation should allow time for the development of the policy in consultation with the JWSHSC which may be delayed given the time required to successfully implement the JWSHSC and train its members. The regulation should clarify whether a separate policy is required for each of harassment and violence, or whether these can be combined.

The regulation should oblige the employer and worksite JWSHSCs to also ensure privacy of the complainant and alleged offender, through for example, signing Codes of Ethics and Conduct.

The regulation should confirm that counselling required for domestic violence is not the responsibility of the employer.

Counselling considered time at work. Would this be an unlimited amount of time? How would employer ensure the counselling remains focused? Will the regulations clarify whether services are employer-provided or WCB provided?

What things can the Government do to support implementation of these workplace policies?

The Government will need to provide employers and affected persons with access to public counselling Agencies.

The regulations should clarify expectations in terms of wage loss replacement if there is a delay in receiving counselling? Will the regulations clarify whether services are employer-provided or WCB provided?

The Government could provide standardized policy templates for employers covering topics such as protection of privacy.

The Government could provide longer implementation timelines so employers can utilize their newly formed JWSHSC.

What can an employer do to assist an employee who they believe is affected by violence and harassment?

This depends on the severity of the situation. The employer can provide employees with information to access counselling, reassign the worker where practical, or if the employee requires time away, the employer could protect their employment in accordance with Employment Standards.

Joint Committees

The regulation should clarify on multi employer sites whether a single multi employer committee established by the prime contractor suffices, and if not, the delineation of issues between the Committees.

The regulation should clarify that the JWSHSC / H&S rep has access to employer records / required under the OHS Act, regulations and Code as it pertains directly to the work of the Committee / rep.

The regulation should oblige the employer, health and safety reps, and worksite JWSHSCs to ensure privacy of the employer and employee records, through for example, signing Codes of Ethics and Conduct.

Are there any provisions that should be added to support employer and worker participation?

The regulations should confirm that each party's internal responsibility for health and safety is not reduced by the implementation of a JWSHSC.

The regulation should clearly spell out the requirements to protect employer and employee private information. Employers are concerned of the potential release of their employees' private information should they be required to share such information with the JWSHSC. On a separate point, the Supreme Court of Canada in *Lizotte* recently clarified that litigation privilege is central to the proper functioning of our justice system and must not be abrogated or encroached upon absent express language to that effect. The Supreme Court clearly held that litigation privilege must be assiduously protected. While there is no express language abrogating litigation privilege in recent amendments to the *Occupational Health and Safety Act*, we are concerned some of the amendments may have that same effect, albeit indirectly. In particular, the Joint Work Site Health and Safety Committee requirements could impair the ability of work site parties to assert litigation privilege over records created during an internal investigation into a serious workplace accident. Accordingly, we urge this Government to respect the spirit and intent of the Supreme Court of Canada's ruling in *Lizotte* and clarify in the new regulations that nothing within the *OHS Act* interferes with the right of work site parties to assert litigation privilege over an internal investigation into a serious workplace accident.

Training

Web based training should be an approved training mechanism.

OH&S should audit 3rd party trainers.

In construction where we have a transient workforce, can the training be passed from employer to employer and done with an industry approach?

The 16 hours of training required annually. Can the ongoing training be enhancement, rather than the same training again? Can employers determine and deliver a portion (say half) of the 16 hours internally? If permitted by the regulations, can the regulations spell out how the training could be validated (eg. Through ACSA or OHS?)

Committee members and health and safety reps should be required to sign a Code of Ethics and Conduct.

Skill sets

Obligations of various worksite parties under the new Act.

Duties and functions of JWSHSCs and health and safety reps.

Fundamentals of OHS legislation (internal responsibility system and basic rights of workers).

Conducting hazard assessments.

Planning and conducting workplace inspections and incident investigations.

Record keeping and privacy legislation.

Communication skills
Conflict management.

Workplace violence.

Sincerely,



Paul Heyens
Chairman