

## December 1, 2021 legislation change summary for AMHSA courses

Significant changes to Alberta OH&S legislation completed in 2020 came into effect on December 1<sup>st</sup>, 2021.

You can find the updated Act, Code, and Regulations at [OHS Act, Regulation and Code | Alberta.ca](#).

Bulletins, updates, and other resources can be accessed at [www.amhsa.net/ohs](http://www.amhsa.net/ohs).

AMHSA is in the process of updating all affected eLearning and instructor-led courses. As these updates are in process, the following supplement will provide current course participants with updated information on the new legislation. This legislation applies to Alberta residents.

These changes impact many courses, including, but not limited to:

- Leadership for Safety Excellence
- Supervisor's Role
- Manager's Role
- Prime Contractor
- Health and Safety Committees and Health and Safety Representatives
- Incident Investigation
- Health and Safety Management Systems
- Health and Safety Auditing
- Audit Refresher

---

### Changes to Defined Terms:

- The term “contractor” has been re-defined for OH&S purposes as a “contracting employer”. *OHS Act Part 1 (f)*
- Self-employed persons are included in the definition of “employers”. *OHS Act Part 1 (k)(i)*
- A “construction site” has been updated to mean “a work site where any of the following activities are conducted:
  - i the building, demolition, repair, alteration, extension or renovation of a structure;
  - ii 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;
  - iii digging, working in or filling a trench or excavation;
  - iv land clearing, earth moving, grading, boring, drilling, abrasive blasting or concreting”. *OHS Act Part 1 (e)(i-iv)*

## Changes to Reporting & Investigation of Work Refusals:

The three workers' rights, including the right to refuse dangerous work (*OHS Act Part 3*) are still protected.

- The term “undue hazard” has been introduced. *OHS Act Part 3 Section 17(1)*
    - In relation to any occupation, an undue hazard includes a hazard that poses a serious and immediate threat to the health and safety of a person.
  - When refusing work, a worker must ensure, as much as reasonable, that the refusal does not endanger the health and safety of others. *OHS Act Part 3 Section 17(3)*
  - If there is a Health & Safety Committee or Representative, they must be made aware of the work refusal as soon as possible, even if the situation was remedied immediately. *OHS Act Part 3 Section 17(5)*
  - The term “disciplinary action” replaces the term “discriminatory action” in relation to dangerous work refusals.
- 

## Changes to Worker's Process for Disciplinary Action Complaints:

If a worker feels they have received disciplinary action for acting in compliance with OH&S legislation (such as refusing work or reporting concerns), their complaint to OH&S must follow “one route”: unionized workers must utilize their collective agreement processes and all others may contact OH&S officers directly.

Complaints to an OH&S officer must be initiated within 180 days of the disciplinary action and OH&S officers have authority to investigate or not based on the merits of the information they receive. If an OH&S officer refuses an investigation, workers may request a review of the decision.

*OHS Act Part 1 Section 19*

---

## Changes to Incident Reporting & Investigation:

- Employers continue to be required to report serious injury, illness and incidents as soon as possible. *OHS Act Part 7 Section 33(1)*
  - This will now include circumstances when an employer believes an incident is likely to result in hospital admittance as well as when a worker is admitted. *OHS Act Part 7 Section 33(2)(b)*
- Serious incidents (*OHS Act Part 7 Section 33*) that **do not** include injuries, can be reported using the OHS Online Incident Reporting System if reported during normal, non-holiday business hours. Once reported, the employer or Prime Contractor can

disturb the scene to conduct their investigation and return the site to active work, unless otherwise notified by OHS.

- OHS reviews and triages each online report, and takes action as appropriate.
- Outside of business hours, employers or Prime Contractors must call the OHS Contact Centre.
- Potentially serious incidents (PSI's) are no longer required to be reported to OH&S by Prime Contractors or employers until **after** an investigation has been completed. *OHS Act Part 7 Section 5 & 6*
- The criteria that define a PSI are now:
  - The incident had a likelihood of causing a serious injury or illness, and
  - There is reasonable cause to believe that corrective action may be needed to prevent recurrence. *OHS Act Part 7 Section 5*

Further clarification on Incident Reporting and Investigations is available in the Government of Alberta Bulletin LI016, available at [OHS Publication. Incident reporting and investigation \(alberta.ca\)](https://www.alberta.ca/oHS-Publication-Incident-reporting-and-investigation.aspx)

---

### **Changes to Health and Safety Programs**

- A health and safety program is required for any employer who regularly employs 20 or more workers including volunteers. *OHS Act Part 2 Section 16*
  - There are no required elements to the program, but it must meet the definition of a system to “promote continuous improvement in occupational health and safety”. *OHS Act Section 1(s)*
- 

### **Changes to Joint Health and Safety Committees & Health and Safety Representatives:**

*Please note that the Health and Safety Committee & Health and Safety Representatives eLearning course is significantly impacted by these changes. An updated eLearning course will be available soon, and the updated instructor-led training is available as of December 1, 2021. Course participants can find current information at [www.amhsa.net/hsc](http://www.amhsa.net/hsc).*

- All “regularly employed workers” will be included in the calculation used to determine the number of workers in place to establish the need for a committee (HSC) or representative (HSR) and to select committee members. Volunteers are not included in the calculation to determine whether a committee or representative is needed. *OHS Act Section 13(2)*
  - In the AMHSA webinar on November 10, 2021, Alberta OHS representatives indicated that the employer has some flexibility in defining “regularly employed” but must be able to support the definition if questioned by an OHS officer.

- In this context, “worker” is defined (*OHS Act Definitions*) as a person engaged in an occupation, and includes employees at all levels of the organization.

*Note: While volunteers are not included in the in the calculation to determine HSC/HSR requirements, they ARE included in the calculation to determine whether a HS Program is required, see previous section.*

- HSCs and HSRs are not required on multi-employer work sites that have a Prime Contractor. Instead, the Prime Contractor designates a health and safety contact to ensure employer and worker cooperation and to address issues that an HSC/HSR would otherwise manage. If there is no Prime Contractor on a multi-employer site, the need for an HSC/HSR follows the same calculation as a single employer site. *OHS Act Section 10(7), 13(3), 14*
- Previously, training was limited to government-approved providers, and was required only for HSC co-chairs. ALL HSC and HSR members are now required to completed HSC training. Training is not limited to government-approved providers but must include:
  - a) the roles and responsibilities of co-chairs and members on joint health and safety committees and health and safety representatives;
  - b) the obligations of work site parties;
  - c) the rights of workers. *OHS Code Part 13 Section 201*

Depending on what training a committee member / HSR has had in the past, relevant training could include courses on important health and safety processes such as OH&S legislation, managing hazards, incident reporting and investigation, or conducting inspections. AMHSA has fully revised training that meets the standards available.

- The HSC/HSR will no longer be required to complete work site inspections as part of their obligations but they must still review the work site inspection documentation. *OHS Code Part 2 Section 13(6)(d)*
- When an officer inspects a work site, the officer may request any member of the HSC or their designates or a HSR to be present at that inspection. *OHS Act Part 2 Section 15*
- Employer chooses the number of worker members needed to equitably represent any unionized or non-unionized workers at the work site, and addresses relevant occupational health and safety concerns. If the union or employees do not provide names to the employer in a timely manner after being given the chance, the employer can appoint worker members. Members representing the employer must not exceed members representing workers. *OHS Act Part 2 Section 13(4) and 13(5)*
- The duties of the HSC and HSR now include the following, reduced from the previous list of duties:
  - the receipt, consideration and disposition of concerns respecting the health and safety of workers,

- participation in the employer's hazard assessment,
  - the making of recommendations to the employer respecting the health and safety of workers,
  - review of the employer's work site inspection documentation.  
*OHS Act Part 2 Section 13(6)*
  - The employer must post contact information for the health and safety committee or representative, but is no longer required to post HSC and HSR names. *OHS Code Part 13 Section 199.1*
  - The HSC Terms of Reference requirements have changed. A new TOR template *and* example are available at [www.amhsa.net/hsc](http://www.amhsa.net/hsc). This AMHSA-created template and example meet the new requirements.
- 

#### **Changes to Prime Contractor Role:**

- Prime Contractor responsibility is still required to be designated on multi-employer construction and oil & gas work sites and can also be designated on other multi-employer work sites. *OHS Act Part 1 Section 10*
- Prime Contractors are no longer required to form an HSC or establish an HSR on a multi-employer work site, however they remain responsible for developing and maintaining a system to ensure the health and safety of workers involved in their work activities – as far as reasonably practicable, and, “must assign an individual responsible for coordinating health & safety between employers and workers”.
  - This individual will:
    - ensure worker H&S concerns are addressed,
    - ensure their participation in the hazard assessment process,
    - make appropriate H&S recommendations to employers regarding workers
    - review work site inspections and,
    - complete other H&S activities necessary to ensure the H&S of workers.  
*OHS Act Part 1 Section 7(b)*