

AMHSA
Alberta Municipal Health and Safety Association

OCCUPATIONAL HEALTH AND SAFETY (OHS) LEGISLATION

OHS Change Updates
Coming into Effect
December 1, 2021

1.5
CPD
Hours

PRE-APPROVED FOR CPDR ALBERTA CONTINUING PROFESSIONAL DEVELOPMENT HOURS

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Welcome, and thank you for joining us today

This webinar and Panelist Q&A is presented by the Alberta Municipal Health and Safety Association (AMHSA), with special guests from OHS Prevention Services, Labour and Immigration and Bennett Jones LLP.

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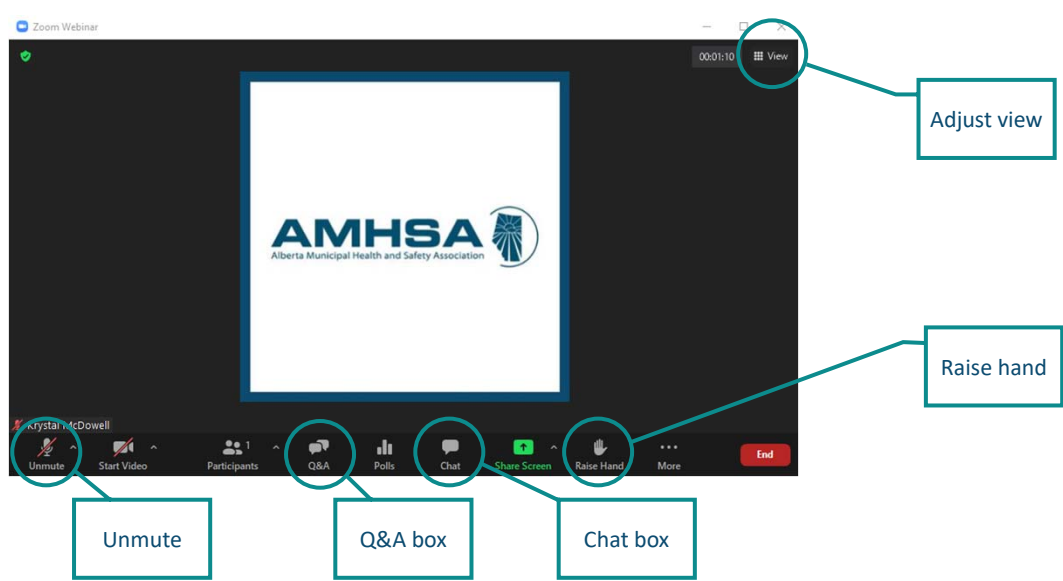
Please note:

This event will be recorded and made available to AMHSA members only.

We invite you to participate in our Q&A segment and ask that you hold your questions until the presentation has completed.

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Zoom Features



The image shows a Zoom Webinar interface with the AMHSA logo in the top right corner. The main content area displays the AMHSA logo. The bottom toolbar contains several icons: Unmute, Start Video, Participants, Q&A, Polls, Chat, Share Screen, Raise Hand, and End. Callout boxes point to the Unmute, Q&A, Chat, Adjust view, and Raise hand icons.

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Agenda



Part 1 - Presentations

- **Alberta Labour and Immigration**
OHS Change Updates Coming into Effect Dec 1, 2021
- **Bennett Jones LLP**
Contractual/policy issues and practical tips for employers to efficiently address and incorporate changes

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Agenda – Cont'd



Part 2 – Panelist Question and Answer

- **Alberta Labour and Immigration**
- **Bennett Jones LLP**
- **Alberta Municipal Health & Safety Association**

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Moderator



Craig Hrynychuk
Executive Director / CAO,
Alberta Municipal Health & Safety Association



Craig is a senior leader with a passion for Operations, and over 20-years of progressive experience in Health, Safety, Environment, Sustainable Development, and Shared Services roles. He specializes in board governance, and mid-large employer defined goal/term organizational transformation in diverse industries including infrastructure construction, utilities (generation, distribution, transmission, telecommunication), manufacturing, aerospace, healthcare, and not-for-profit associations.

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Panelist



Rob Feagan
Executive Director, OHS Prevention Services,
Labour and Immigration



Rob Feagan has held his position as Executive Director of Occupational Health and Safety Prevention Services with Labour and Immigration for three years. Prior to assuming this position, he served as Executive Director of OHS Delivery and Director of Partnerships in Injury Reduction. Born in the Northwest Territories and educated at Dalhousie University in Halifax, Nova Scotia, Robert held various senior positions with the Government of the Northwest Territories prior to joining the Government of Alberta.

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Panelist



Dr. Richelle Prickett
OHS Implementation Office Lead,
OHS Prevention Services,
Labour and Immigration



Dr. Richelle Prickett is the OHS Implementation Office Lead, responsible for preparing internal and external stakeholders for the changes to the OHS legislation. Her background is in knowledge translation, user-centered design, behaviour change/change management and project management. She has been with the Ministry of Labour and Immigration, in the Safe, Fair and Healthy Workplaces division, since 2015.

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Panelist



Simon Foxcroft
Partner, Bennett Jones LLP



Bennett Jones

Simon Foxcroft has a commercial practice focused primarily on occupational health and safety law, construction law and mining law. He provides advice with respect to occupational health and safety related matters throughout Western Canada. In particular, he is involved in the auditing, reviewing and drafting of construction and project contracts to ensure conformity with both provincial and federal health and safety obligations, and with providing advice in relation to large energy construction projects. He also advises clients on all aspects of incident response and management. He acts for various safety organizations and for both owners and contractors.

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OHS Legislation Changes

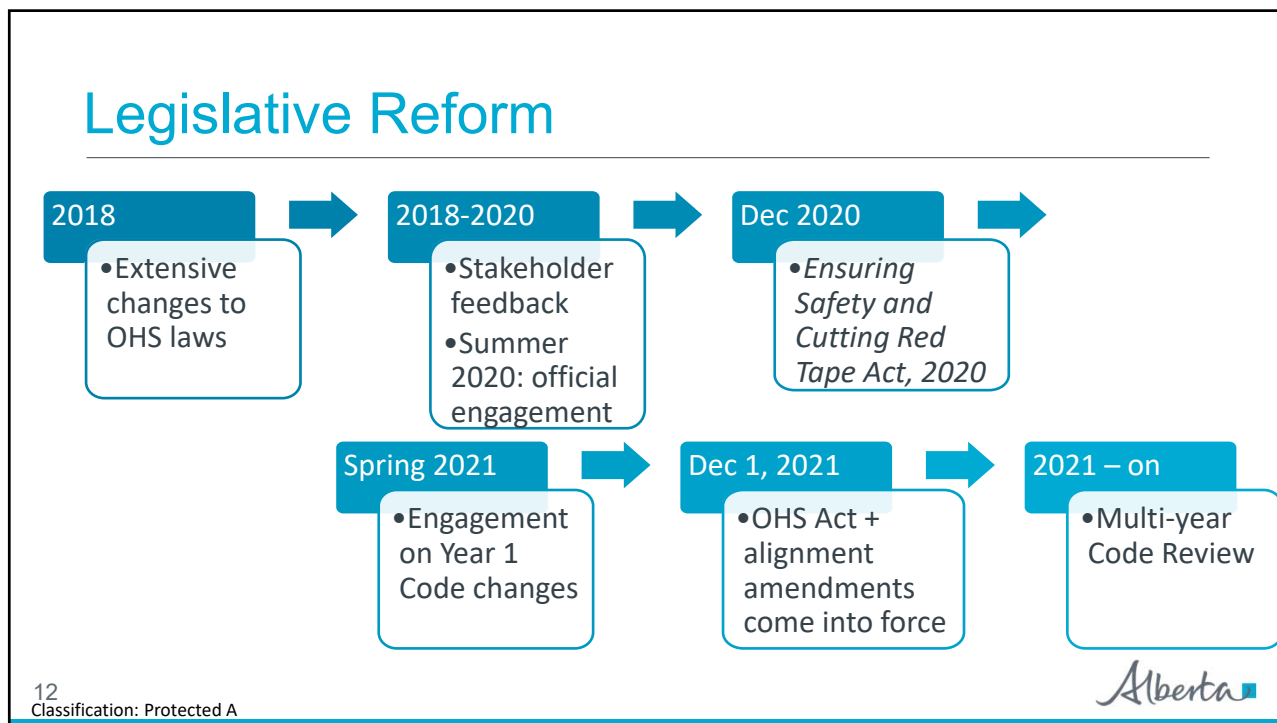
Ensuring Safety and Cutting Red Tape Act, 2020



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What we heard

- Stakeholders support:
 - Simple guidelines that provide the flexibility needed for the diversity of workplaces in Alberta
 - Clear definitions and streamlined processes
 - Reduction of burdensome documentation and unnecessary regulatory requirements
 - Maintaining workers' rights to know, participate, and refuse

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Changes to the Legislation

Clearer definitions

Clarifying obligations

Amended rules for key processes

Simplifying HSC/HS rep and OHS programs

Incorporating radiation equipment protection into the OHS legislation

Simpler processes for acceptances and approvals

Clarity and flexibility in enforcement

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Key Concepts in Alberta OHS Legislation

- Internal responsibility system
 - Everyone in the workplace is responsible for OHS, according to their authority and control
 - Work site parties have processes in place to manage health and safety
 - External monitoring and enforcement by government
- Three fundamental rights of workers
 - Right to know
 - Right to participate
 - Right to refuse dangerous work

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Key changes

- Health and safety committees (HSC) and representatives (HSR)
- Radiation equipment
- Dangerous work refusals
- Disciplinary action complaints
- Work site party (WSP) obligations
- Serious incident and injury reporting
- Health & safety programs
- Consolidation of most of the OHS Regulation to OHS Act / Code

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Health and Safety Committees (HSC) and Representatives (HSR)

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HSC and HSR

OHS Act

Residing in the Act :

- High level duties of HSCs/HSRs
- Framework requirements for HSCs/HSRs
- Employer must cooperate with the HSC/HSR, respond in a timely manner and ensure the HSC/HSR is meeting their obligations

OHS Code

Residing in the Code :

- More specific or technical requirements for HSCs/HSRs
 - Membership selection
 - Terms of Reference
 - Training requirements
 - Special meetings
 - Quorum
 - Posting of contact info for HSC/HSR

Overall:

- Greater flexibility for operations
- Simpler calculation of worker numbers for HSC/HSR requirement

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When is a HSC or HSR required?

- HSC is required for employers that **regularly employ** 20 or more workers
- HSR is required for employers who **regularly employ** 5-19 workers
- Employers have flexibility in determining what “regularly employed” means for their business
 - For the purposes of HSC/HSR thresholds, unpaid volunteers are not counted
- HSC or HSR must be established on multiple employer work sites **that do not have a prime contractor** (subject to the threshold numbers for regularly employed workers)

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Prime contractor sites: HSCs/HSR

- HSCs and HSRs are no longer mandatory for work sites with a prime contractor
 - Prime contractor must establish a system to ensure employer/worker cooperation and designate a person to ensure cooperation occurs
- Employers at the work sites will maintain their own employer-level HSC or HSR (depending on the number of workers)
- No changes to multi-employer work sites without a prime contractor,
 - Such work sites can voluntarily designate a prime contractor

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Duties of HSC and HSR

- The duties of the HSC and HSR include the following:
 - 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
- 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

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HSC/HSR – Code Requirements

- HSC co-chairs
 - Quorum
 - Duties/training considered work time
 - Special meetings
 - Posting of contact info
- } Moved from Act; not new
- } Minimal changes

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HSC Membership Selection

- Employer chooses number of worker members needed to:
 - equitably represent any union at the work site and non-unionized workers
 - address relevant occupational health and safety concerns
- Non-unionized workers choose the non-unionized worker representatives
- The relevant union chooses the unionized worker representatives
- Employer chooses employer representatives
- If names not provided in timely manner, employer can appoint

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HSC Terms of Reference

- Processes for
 - selecting co-chairs
 - selecting worker members to the committee to ensure worker members are representative of the workers for that employer
 - conducting meetings, and forwarding health and safety concerns to the attention of the employer
 - replacing a member during the member's term of office
 - dispute resolution, for when the committee cannot agree on a recommendation to the employer
 - addressing circumstances where committee members are not fulfilling their duties
- Establishing a term of office for committee members
- Frequency for regular committee meetings and how meeting records will be maintained

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HSC/HSR Training

- Removing requirements:
 - training by a designated training organization
 - mandatory HSC/HSR training curriculum
- All HSC members are trained (not just co-chairs)* or the HSR
- Training must cover
 1. Roles and responsibilities of co-chairs and members on HSC and HSR
 2. Obligations of work site parties
 3. Rights of workers

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HSC/HSR – Removed/moved

- Removed:
 - Work site inspections
 - Disclosure of personal information
- Moved:
 - Duties of employers, contractors and prime contractors (OHS Act, General obligations)
 - Inspection of work site with officer (OHS Act, Section 15)

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Radiation equipment

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Radiation Safety

- The *Radiation Protection Act* and its regulations will be incorporated into the OHS Act and OHS Code
- Changes to radiation requirements will only be administrative or where alignment is needed
 - Enforcement is being transferred to OHS officers
 - Inspection by an authorized radiation health inspection agency
 - Registration with an authorized radiation health registration agency.
- OHS enforcement tools, such as administrative penalties, will apply to radiation contraventions
- Radiation overexposure is an OHS reportable incident

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Dangerous Work Refusals

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Dangerous Work Refusals – Undue Hazard

- The right to refuse dangerous work is a foundational element of the internal responsibility system (IRS)
- Definition of “undue hazard” – a hazard that poses a serious and immediate threat to the health and safety of a person

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Dangerous Work Refusals

Employers must:	Workers:
<ul style="list-style-type: none">• Notify the HSC or HSR of the refusal as soon as possible• Cooperate with the HSC and respond to recommendations• Inspect the undue hazard and take action to remedy the undue hazard• Produce a work refusal inspection report and provide it to worker, HSC/HSR• Ensure that no one is assigned to do the work until inspection is complete• Inform other workers of the refusal if the employer believes OHS has been notified.	<ul style="list-style-type: none">• May refuse work in the presence of an undue hazard• Must (where reasonable) ensure that the work refusal doesn't endanger the health and safety of others• After employer takes action to remedy an undue hazard, workers may notify an OHS officer if they believe the undue hazard still exists


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Disciplinary Action Complaints

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Disciplinary Action Complaints

New

- Renamed from 'discriminatory action'
- A worker may file a complaint within 180 days after the contravention occurs
- Where a collective agreement exists, complaints must be addressed through the agreement's grievance process
- Officers may dismiss vexatious, frivolous, trivial, without merit, and bad faith complaints
- A worker whose complaint has been dismissed may request a review by a director

No Change

- No person may take any disciplinary action against a worker for fulfilling their duties or exercising their rights under OHS laws
- Reverse onus provision maintained
- Remedies that officer may employ remain the same, with the additional requirement that money earned elsewhere must be deducted from any compensation award

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Prime Contractor Obligations

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Prime Contractors

- Are required on work sites with 2 or more employers for:
 - Construction sites
 - Oil and gas sites
 - Work sites designated by a Director
- May establish prime contractor at other types of multiple-employer work sites

Prime contractor obligations (changed):

- Establish a system or process to ensure cooperation between employers and workers in respect to health and safety
- Designate a **person** in writing to implement that system

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Work Site Party (WSP) Obligations – Summary of Changes


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WSP	Updates
Employer *Now includes self-employed person	<ul style="list-style-type: none"> • Moved: Competency (work that may endanger...) • New: HSC compliance
Supervisor	Removed: <ul style="list-style-type: none"> • Competency requirement • PPE requirement (exists in Code)
Worker	Moved from Regulation: <ul style="list-style-type: none"> • Participate in training • Competency (work that may endanger...)


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WSP	Updates
Supplier	<ul style="list-style-type: none"> • Addition of PPE
Service Provider	<ul style="list-style-type: none"> • Wording change: “<u>or in vicinity of ...</u>”
Contracting Employer *Formerly contractor	<ul style="list-style-type: none"> • Ensure that employers they are directing comply with OHS legislation • Communicate hazards
Owner	<ul style="list-style-type: none"> • Communicate hazards (moved) • Land or premises do not need to be in the control of the owner

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Reporting Serious Injuries and Incidents and Potentially Serious Incidents (PSIs)

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Reporting serious injuries and incidents

New

Addition to the list of items the prime contractor, or if no prime contractor, the employer must report:

- Illness that results in hospitalization or fatality
- Incident where there is reason to believe a worker has or will be hospitalized
- Exposure to radiation in excess of its limits in the OHS Code

No Change

Items employer or prime contractor must report:

- Injury resulting in hospitalization
- Incident resulting in death of worker
- Explosion, fire, or flood that causes or has potential of causing a serious injury or illness
- Collapse of crane, derrick or hoist
- Collapse or failure of building or structure
- Mine and mine site incidents (list has moved to OHS code)

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Non-injury reporting

- Serious incidents involving a fire, flood, or a derrick, crane, hoist or structural collapse without injury or illness can be reported via the OIR portal
 - OHS Act 33(2) (c)-(e) with no injuries or illness
- More flexibility, better use of resources

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Potentially Serious Incidents

New

- Clearer process by including a definition of a PSI:
 - Likelihood of causing a serious injury or illness, and
 - Need for corrective action to prevent recurrence
- Initial notification to OHS no longer required

No Change

- Prime contractor, or if no prime contractor, the employer is still required to complete an investigation
- PSIs still have to be reported to OHS and the HSC/HSR when the investigation is complete
- Information from potentially serious incident reports will be used for information and education, and not inspections in most cases

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Health and Safety Programs

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Health and Safety Program Requirements

- Required for employers who **regularly employ** 20 or more workers
 - Includes volunteers
- Streamlined OHS program requirements
- Flexibility to choose a program that works for the work site

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Consolidation of OHS Regulation

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Moved to Act

- Hazardous occupation
- Hazardous work site
- Designation of notifiable diseases
- General protection of workers
- Duties of workers
- Safety training
- Designated organizations

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Moved to Code

- Specifications
- Equipment
- General protection of workers
- Harmful substances procedures and training
- Joint First Aid Training Standards Board
- Blasting permits
- Mining certifications



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Repealed	Retained
<ul style="list-style-type: none">• Board of Examiners for Mining• Training (HSC)• Approvals (HSC/HSR)• Out-dated requirements• Duplicative requirements	<ul style="list-style-type: none">• Necessary definitions• Regularly employed• Research & education programs• Surveillance programs


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Overview of other changes

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Act changes

- Allowances, acceptances and approvals
- Administrative penalties
- Director review
- Appeals

Code changes

- Administrative changes
 - PPE definition
 - Director
 - Joint health and safety committee
 - Spelling, grammar, and gender-neutral language
- Farms and ranches
- Domestic workers

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Changes to other legislation


- Repealing
 - Administrative Penalty Regulation
 - Farming and Ranching Exemption Regulation
 - Radiation Protection Act, Radiation Protection Regulation
 - Radiation Health Administration Regulation (under the *Government Organization Act*)

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Stakeholder Support and Questions



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Support for stakeholders: Presentations

Ensuring Safety and Cutting Red Tape Act, 2020



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OHS Contact Center:

Phone: [780-415-8690](tel:780-415-8690) (Edmonton)
Toll free: [1-866-415-8690](tel:1-866-415-8690)
TTY: [780-427-9999](tel:780-427-9999) (Edmonton)
TTY: [1-800-232-7215](tel:1-800-232-7215)

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Support for stakeholders: Publications

OHS Education and resources

Ask an expert, sign up for OHS updates, search employer records, or access statistics, publications, webinars and other resources.



Occupational Health and Safety (OHS) Resource Portal

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Implementation preparation

- **HSCs:**
 - Update TOR
 - Train all committee members
- **Regularly employed**
 - HSC/HSR vs health and safety programs
- **Prime contractors:**
 - Set up system or process to ensure cooperation
 - Designate a person for health and safety
- **Update reporting processes (PSIs, non-injury incidents)**
- **PPE**
 - Same requirements as for equipment

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More information + Questions

- Additional information on the changes are available at [Alberta.ca](https://www.alberta.ca)
- Updated OHS legislation available from the Queen's Printer
 - [OHS Act](#)
 - [OHS Regulation](#)
 - [OHS Code](#)

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The logo for Bennett Jones, consisting of a green and blue geometric cube icon above the text "Bennett Jones".

2021 OHS Legislative Changes in Alberta

Presented to AMHSA
November 10, 2021

Simon Foxcroft
Partner, Bennett Jones LLP

The slide features a dark blue background with a blurred light trail from a bridge at night. The text is white and green. Two green chevrons point towards the text on the right.

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Some of the material and pressing issues for employers to consider to be ready on December 1

- › Terms of reference for the HSC and HSC member training requirements (s.197 and s. 201 New Code)
- › Incident reporting and investigation obligations (s.33 New Act)
- › Prime Contractor regime (s.1 and s.10 New Act)
- › Changes in work site party obligations under the New Act (s.1 and Part 1 of the New Act)
- › Repeal of s.15(2) OHS Regulation (general safety training requirements for equipment) and the interplay of s.3(2) of the New Act with the new compliance, stop work and stop use order provisions (s. 38, s.39 and s.40 of the New Act)
- › Changes in the worker right to refuse dangerous work provisions (s.17 New Act)



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Tips and best practices to understand and adapt to the changes

- › "Free" publications, updates, articles, seminars
- › Solve ambiguity with clear and purposeful drafting
- › Seek possible efficiencies flowing from the provisions of the New Act and the New Code
- › Take the opportunity to dust-off and tune-up policies, procedures and contracts
- › Use the change as a prime education opportunity – ensure that employees at all levels are involved in the adoption process



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Relevant articles by Bennett Jones

- › ***New Alberta Occupational Health and Safety Laws to Take Force December 1, 2021*** (November 09, 2021) [here](#)
- › ***Proposed Sweeping Changes to Alberta's Occupational Health and Safety Act*** (November 09, 2020) [here](#)
- › ***Maximizing Your Safety Compliance and Efficiency In a Trying Economic Environment*** (May 12, 2020) [here](#)



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Questions?
Thank you




Simon Foxcroft
Partner

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Question & Answer Period

If you have a question, please enter into the Q&A or chat box.

To ask a question via audio, please raise your hand to be unmuted.

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Further Resources

For copies of the presentation, video, bulletins, and links to the Act, Regulation, and Code, please visit our website at <https://www.amhsa.net/resources/ohs-legislative-updates/>

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Thank you

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