

# *OHS Legislation Changes*

## *Ensuring Safety and Cutting Red Tape Act, 2020*

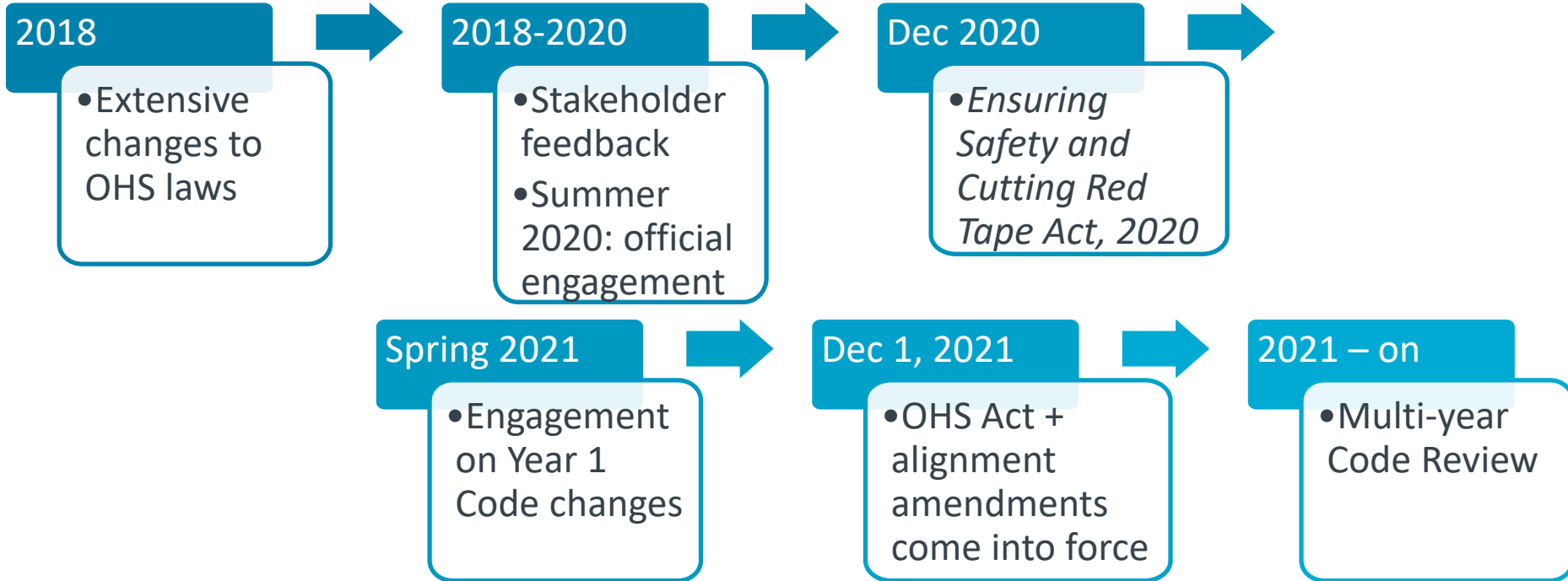
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*Alberta* 

# Legislative Reform

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# What we heard

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- 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

# Changes to the Legislation

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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

# Key Concepts in Alberta OHS Legislation

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- 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

# Key changes

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- 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

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

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# HSC and HSR

## OHS Act

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### 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

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### 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



# When is a HSC or HSR required?

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- 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)

# Prime contractor sites: HSCs/HSR

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- 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

# Duties of HSC and HSR

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- 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

# HSC/HSR – Code Requirements

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

# HSC Membership Selection

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- 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

# HSC Terms of Reference

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- 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

# HSC/HSR Training

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- 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

\*Except for farms and ranches

# HSC/HSR – Removed/moved

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- 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)



# Radiation equipment

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# Radiation Safety

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- 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

# Dangerous Work Refusals

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# Dangerous Work Refusals – Undue Hazard

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- 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

# Dangerous Work Refusals

## Employers must:

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- 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.

## Workers:

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- 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

# Disciplinary Action Complaints

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# Disciplinary Action Complaints

## New

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- 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

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- 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

# Prime Contractor Obligations

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# Prime Contractors

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- 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

# 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"> <li>• Moved: Competency (work that may endanger...)</li> <li>• New: HSC compliance</li> </ul>
Supervisor	Removed: <ul style="list-style-type: none"> <li>• Competency requirement</li> <li>• PPE requirement (exists in Code)</li> </ul>
Worker	Moved from Regulation: <ul style="list-style-type: none"> <li>• Participate in training</li> <li>• Competency (work that may endanger...)</li> </ul>

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

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

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# Reporting serious injuries and incidents

## New

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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

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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)

# Non-injury reporting

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- 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

# Potentially Serious Incidents

## New

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- 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

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- 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



# Health and Safety Programs

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# Health and Safety Program Requirements

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- 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

# Consolidation of OHS Regulation

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# Moved to Act

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

# Moved to Code

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

# Repealed

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- Board of Examiners for Mining
- Training (HSC)
- Approvals (HSC/HSR)
- Out-dated requirements
- Duplicative requirements

# Retained

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- Necessary definitions
- Regularly employed
- Research & education programs
- Surveillance programs

# Overview of other changes

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# Act changes

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

# Code changes

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

# Changes to other legislation

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



# Stakeholder Support and Questions

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# Support for stakeholders: Presentations

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## *Ensuring Safety and Cutting Red Tape Act, 2020*

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Classification: Protected A

### 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)

# Support for stakeholders: Publications

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## OHS Education and resources

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

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Occupational Health and Safety (OHS) Resource Portal

# Implementation preparation

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- 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

# More information + Questions

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- 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](#)