Recent Amendments To The Workers Compensation Act Give WorkSafeBC Enhanced Compliance Powers



Recent changes to the *Workers Compensation Act* in British Columbia (the Act) significantly enhance WorkSafeBC's ability to enforce occupational health and safety compliance. These include:

1. Changing the threshold for WorkSafeBC to issue stop-work orders;
2. Introducing "compliance agreements" between WorkSafeBC and employers;
3. Imposing a new framework for administrative penalties of up to $1,000; and
4. Expanding the scope of Court injunctions and who can be affected by them, including directors and corporate officers.

The amendments also create new obligations on employers when investigating incidents.

These legislative changes are all currently in force. WorkSafeBC is conducting ongoing policy reviews regarding the implementation of these changes.

1. Employers' Investigations and Reports after an Accident: A Two-Step Process

Employers must notify WorkSafeBC of any accident that has resulted in a worker's serious injury or death, a major structural failure or collapse (building, bridge, tower, crane, hoist, temporary construction support system or excavation), the major release of a hazardous substance, or any other incident that the regulations require to be reported.

All reportable accidents, aside from certain motor vehicle accidents, must be investigated by the employer. In addition, an employer must investigate any accident that resulted in a worker's injury that required medical treatment or that had the potential to cause serious injury. Now, a detailed, two-step process must be followed by employers for their investigations and reports.

First, after an accident, employers must immediately conduct a preliminary investigation to identify any unsafe conditions, acts, or procedures that "significantly contributed to the incident" and identify any interim corrective actions that might be necessary to prevent similar incidents, pending the full investigation of the incident. Employers must prepare a report of their preliminary

investigation within 48 hours of the incident's occurrence. The report must be submitted to WorkSafeBC, if requested. If a need for interim corrective action is identified, that corrective action must be taken without "undue delay". A report of the action taken must be prepared as soon as practicable and provided to the joint committee, the worker health and safety representative, or posted at the workplace.

Secondly, employers must still undertake a full investigation immediately after completing their preliminary investigation in order to determine "as far as possible" the cause of the incident and determine the corrective action necessary to prevent similar incidents. A full report of the investigation must be prepared and submitted to WorkSafeBC within 30 days from the date of the incident (unless WorkSafeBC grants an extension). If any corrective action is taken following the full investigation, an additional report of the action taken must be prepared as soon as practicable and provided to the joint committee, the worker health and safety representative, or posted at the workplace.

2. Stop-Work Orders: Not just at One Worksite

The threshold that needs to be met before WorkSafeBC can issue a stop-work order has changed. Previously, WorkSafeBC needed to have reasonable grounds to believe that an "**immediate danger**" existed that would likely result in serious injury, illness or death.

Now, that threshold has been reduced to a "**high risk**" of serious injury, serious illness or death. In the case of certain repeat offenders, the threshold is reduced even further. In such cases, if WorkSafeBC has a reasonable belief of **any** risk of serious injury, illness, or death that will be sufficient grounds to issue a stop-work order.

The effect of a stop-work order can now be extended to multiple worksites. If WorkSafeBC issues a stop-work order, WorkSafeBC now has the power to also issue a "stop operations" order. This can be issued against the same employer at another workplace (or part of a workplace). Through this power, WorkSafeBC can also prohibit the employer from starting work at the other workplace. To issue a "stop operations" order, WorkSafeBC must have reasonable grounds to believe that "the same or similar unsafe working or workplace conditions exist" at the other workplace as at the place where the original stop-work order was issued, or that those unsafe working or workplace conditions would exist if the work were to start. WorkSafeBC is not required to specify the address of the other workplace, which creates the potential for an operations-wide order.

3. Compliance Agreements: An Agreement to Remedy the Employer's Non-Compliance

A "compliance agreement" is another tool now available to WorkSafeBC to ensure compliance with the Act. WorkSafeBC can enter into a written agreement with an employer that describes one or more actions that the employer will take in order to remedy the employer's contravention or failure to comply with Part 3 of the Act (Part 3 governs occupational health and safety). Compliance agreements can be used if three conditions are met:

1. The employer has not contravened or failed to comply with Part 3 of the Act in the twelve-month period immediately before the contravention/failure;
2. The health and safety of workers is not at "immediate risk"; and
3. WorkSafeBC considers that entering into the agreement is "appropriate in the circumstances".

WorkSafeBC can rescind the agreement if the employer does not take the required action, or if it considers that the agreement no longer adequately protects the health or safety of workers.

4. Administrative Penalties: A new Framework for Lower Penalties

The Act has been amended to allow WorkSafeBC to issue administrative penalties of not more than $1,000 if it is satisfied, on a balance of probabilities, that the employer has failed to comply with a provision of Part 3 of the Act or the regulations made pursuant to the Act. A penalty under this new framework is to be levied in the manner specified by way of a regulation that has not yet been finalized. It is anticipated that this regulation will provide a more streamlined method of assessing administrative penalties, compared to the existing framework for penalties over $1,000. The framework for assessing penalties over $1,000 has not changed.

5. Expanded Scope for Recipients of Court Orders: Attention Board Members, Officers, and C-Suite Personnel

As was the case before the recent amendments, the Act grants WorkSafeBC the authority to seek an injunction where there are reasonable grounds to believe that a contravention or failure to comply with Part 3 of the Act, the regulations, or a WorkSafeBC order has occurred or is likely to occur. However, changes to the Act have dramatically expanded the scope of what can be ordered by the Court in granting such an injunction. This authority has expanded in two key ways.

First, the breadth of what the Court can order by way of an injunction has increased. Previously, the Court was limited to restraining a person from continuing or committing a contravention, or to directing them to comply with Part 3 of the Act, the regulations, or the WorkSafeBC order.

Now the Court is also able to restrain a person from carrying on an industry, or an activity in an industry, that falls within Part 1 of the Act (being those industries that fall within British Columbia’s workers’ compensation system). This prohibition can extend for a limited or indefinite period of time.

Secondly, the class of individuals who can be affected by this new power to restrain carrying on an industry or activity has been broadened. The Court can now expressly include, among other people, the following:

1. The elected members of the board of directors of a corporation;
2. A person who is the chair or any vice chair of the board of directors or other governing body of a corporation, if that person performs the function of a chair or vice-chair of a corporation’s board of directors on a full-time basis, regardless of that person’s actual title;
3. The president of a corporation, regardless of the person’s actual title; and
4. Any officer of a corporation who performs policy-making functions and who has the capacity to influence the direction of a corporation, regardless of the person’s actual title.

A Final Note

The new, mandatory deadlines in the incident investigation process make it even more important for employers to establish a robust incident reporting system to ensure that incident investigations are being properly managed as early as possible. The 48-hour window for completing an initial investigation will be a challenging time frame, particularly for large organizations. Given the expanded scope of enforcement powers, including new powers against executives and directors, corporate employers should

remain diligent in their approach to conducting investigations and preparing investigation reports.

The implementation of some aspects of the recent amendments may change as WorkSafeBC reviews the current policies and guidelines. As a result, employers are encouraged to regularly consult the current versions of WorkSafeBC’s policies and guidelines concerning these changes and the Act generally. Current versions of these documents are published on WorkSafeBC’s website at www.worksafebc.com.

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