

Saskatchewan Prime Contractor Regulations Coming into Force January 1, 2015



On **January 1, 2015**, *The Occupational Health and Safety (Prime Contractor) Regulations* will come into force in Saskatchewan (the *Prime Contractor Regulations*).¹.

If you are doing business in Saskatchewan, you should consider whether the *Prime Contractor Regulations* will apply to your operations. This is particularly the case if you own worksites in Saskatchewan, as you may need to amend your contracts and your OHS management plans.

Prime Contractors: Who Are They?

Under section 3-13 of the *Saskatchewan Employment Act* (SEA), prime contractors are required at every worksite where there are multiple employers or self-employed persons, **and** the worksite meets “the **prescribed** circumstances.”²

Section 3-13 of the SEA states that the prime contractor for this type of worksite “is to be determined in the **prescribed** manner” and the prime contractor “shall carry out the **prescribed** activities.”

“Prescribed” is defined in section 1-2 of the SEA, as meaning “prescribed in the regulations made by the Lieutenant Governor in Council.” The *Prime Contractor Regulations*, which will come into force on January 1, 2015, set out the “prescribed circumstances” and other details about where and when prime contractors will be required.

Look at your Industry: Forestry, Oil and Gas, and Construction

The *Prime Contractor Regulations* require the following worksites to have a prime contractor:

- Worksites in the **forestry industry**, the **oil and gas industry**, and the **construction industry** where “10 or more self-employed persons or workers under the direction of two or more employers are engaged at the worksite.”

Readers are encouraged to examine if their activities fall into the forestry industry, oil and gas industry, or construction industry, as those terms are defined in the *Prime Contractor Regulations*.

The *Prime Contractor Regulations* define the “forestry industry” as including “activities or operations of a mill operation as defined in section 389 of *The Occupational Health and Safety Regulations, 1996*.” A “mill operation” is defined in *The Occupational Health and Safety Regulations, 1996* as “the operation of a pulp mill, paper mill, sawmill, plywood mill, wafer-board mill or strand-board mill, and includes the operation of equipment that is designed to manufacture or process wood products.”³

The “oil and gas industry” is defined in the *Prime Contractor Regulations* as “the drilling, operation and servicing of a gas well or oil well as regulated by Part XXIX of *The Occupational Health and Safety Regulations, 1996*.”

Determine if You Are an Owner and Plan Accordingly

If there is no written agreement assigning the role of prime contractor at those worksites that must have a prime contractor, the **default** prime contractor will be the owner.

Worksite owners need to be aware that the *Prime Contractor Regulations* spell out owner obligations that must be fulfilled when owners assign the prime contractor role to another party. For example, the owner must provide the prime contractor with the policies, procedures and safe work procedures that the employers and self-employed persons have, and the owner must do so in writing, as soon as possible after the prime contractor has been designated.

In this regard, Saskatchewan’s law will be significantly different from other comparable provincial laws, such as Alberta’s *Occupational Health and Safety Act*.

Companies in the affected industries should review whether their worksites may require a prime contractor as of **January 1, 2015**. Owners of these worksites should also consider:

- Whether they want to keep or delegate the prime contractor role;
- How these legal changes impact their existing OHS management plans;
- Whether amendments will be required to existing or future contracts.

Review the Prime Contractor’s Duties

Some of the main duties of the prime contractor will be as follows:

- Ensure that all activities at the worksite that may affect health and safety of workers or self-employed persons are coordinated;
- Ensure, as far as reasonably practicable, that all employers and self-employed persons have adequate and appropriate policies, procedures, safe work practices, equipment, competent workers and information to ensure compliance with Part III of the SEA and the *Prime Contractor Regulations*;
- Prepare a written plan that addresses how these requirements will be met;
- Identify a competent person to oversee and direct the activities of employers, workers and self-employed persons at the worksite;
- Identify and inform employers, workers, and self-employed persons about the hazards at the worksite;
- Ensure, as far as reasonably practicable, that employers or self-employed persons at the worksite eliminate or control hazards identified by the prime contractor.

Special Considerations for the Construction Industry

The *Prime Contractor Regulations* say that the construction industry “does not include activities or operations undertaken by a person in connection with constructing or renovating if the worksite comprises dwellings that are less than four units”.⁴ Unfortunately, that is the only definition of “construction industry” found in the *Prime Contractor Regulations*.

It is too early to know how this term will be interpreted under the *Prime Contractor Regulations*. However, in Saskatchewan’s *Occupational Health and Safety Regulations*, “construction” means “the erection, alteration, renovation, repair, dismantling, demolition, structural maintenance and painting of a structure, and includes (i) land clearing, earth moving, grading, excavating, trenching, digging, boring, drilling, blasting and concreting; and (ii) the installation of any plant.”⁵ It remains to be seen if Saskatchewan’s Occupational Health and Safety Division will provide further clarification, or if the *Prime Contractor Regulations* will be amended to provide a clearer definition.

Stay tuned for more updates on Saskatchewan’s Occupational Health and Safety Laws from Bennett Jones LLP.