

WORKPLACE SAFETY & HEALTH LEGISLATION

by Daryl A. Chicoine

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For some, the workplace can be a dangerous place. The construction industry is unusual in that not only is there risk of “minor” or non-life threatening injuries, for many of those in the industry the risk of major catastrophic injuries – and fatalities – is increased.

While at times it may seem that it is inevitable that accidents and injury will happen in the workplace, there are significant legal consequences to both companies and individuals when an injury or fatality happens on construction sites.

In Manitoba *The Workplace Safety and Health Act* (“the Act”) applies to employers such as the Provincial government and to every workplace that falls under Provincial jurisdiction to regulate. With few exceptions, most construction sites in Manitoba fall under Provincial regulatory jurisdiction.

The Act makes both the employer and employees responsible for workplace safety. Included in the employer’s responsibilities is a requirement, as far as is reasonably practical, to provide and maintain a workplace that is safe and without risks of health. One of the ways that this responsibility can be met is by providing all necessary equipment, systems and tools for the safety of employees, however safety equipment alone will not satisfy the responsibility imposed by the Act. Employers are also required to ensure that all of his/her workers comply with safe work procedures and are familiar with the safety hazards that they may be exposed to, as well as being familiar in the use of all of the safety equipment that the employer provides for their protection.

A contractor employer is also required, again as far as reasonably practical, to ensure that the activities at the workplace do not create a risk to the safety or health of others. Unique to the construction industry is the responsibility of the employer of workers on a construction worksite to inform the general contractor of the name of the supervisor of his employees on that project.

In addition to providing some overall duties and responsibilities of owners, general contractors, contractors and employees, the Act regulates minimum standards for workplace conditions, including lighting, toilet facilities and general workplace conditions, as well as setting maximum levels of continuous noise.

The Act contains a number of significant compliance and enforcement provisions, one of which is a statutory prohibition of discriminatory action against workers. The Act prohibits discrimination against persons who exercise their rights under the Act, refuse to do unsafe work, or attempt to have the Act or its regulations enforced. Safety and Health Officers appointed under the Act are given broad enforcement powers, from ordering a stop to the discriminatory action, to ordering compensation and reinstatement of affected workers.

Safety and Health Officers also have the authority to enter on and inspect the work site, test equipment, interview persons and issue both improvement orders and stop work orders. In an attempt to not penalize workers affected by a stop work order, the Act requires that they be paid the same wages and benefits that they would have been paid if a stop work order was not in effect.

Some of the decisions of Safety and Health Officers, such as stop work and improvement orders, can be appealed to the Director of Workplace Safety and Health Division if the appeal is filed within 14 days of

the order. The appeal of a decision of the Safety and Health Officer to the Director or the Manitoba Labour Board does not suspend the operation of the directions or order being appealed.

The legislation provides consequences for failing to comply with the Act which range from improvement orders, stop work orders and related administrative penalties all the way to prosecution in the courts, with penalties of up to 6 months imprisonment and/or up to \$150,000.00 in fines for a first offence. Clearly it is in the interest of employers to pay careful attention to workplace health and safety issues!

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