

Canada Labour Code, Part II - Overview

Preface

The purpose of the overview of the *Canada Labour Code*, Part II, is to explain the legislation which applies to all areas under federal jurisdiction. This presentation designed for client education, will help to promote, through health and safety committees and health and safety representatives, self-regulation and the internal resolution of occupational health and safety-related complaints and problems raised by employers and employees. It will also help to establish a mechanism conducive to current affairs management and union participation.

The basic role of Client Education and Training is to inform clients about proposed, new and existing programs provided by the Labour Program of Human Resources and Skills Development Canada.

This role is rather broad and based on a certain number of needs that mesh well with the Program's requirements. These requirements are that clients be informed of new legislation and proposed legislation, new regulations and proposed regulations, and amendments to legislation and regulations, and clients be educated about requirements, benefits and rights under the legislation.

Description

This is an information session on the *Canada Labour Code*, Part II, intended for employers and employees, members of health and safety committees and representatives who are covered by Part II of the *Code*.

Purpose

The purpose of the information session is:

- to provide information about the *Code* as a proactive tool for reducing workplace accidents and occupational illnesses; and
- to identify the sections of the *Code* that deal with the role of the participants in monitoring compliance.

Methods

The information session emphasizes participation and discussion, taking into account the participants' and trainer's perceptions and experiences.

The session includes a simplified presentation of the key provisions of Part II of the *Code* that have to do with occupational health and safety.

During the session, information will be conveyed by means of a presentation and a group discussion.

Introduction

"Each year, many Canadians are killed or injured on the job. These tragedies have profound social repercussions and cost billions of dollars.

Knowing the *Canada Labour Code* and, more importantly, applying the provisions of Part II enables us to identify and correct problems that affect health and safety. It is one of the most effective ways to reduce accidents and occupational diseases in the workplace.

The *Canada Labour Code* applies to employees who work under federal jurisdiction, which encompasses about 10% of the Canadian workforce. They are employed in key sectors of the economy, notably air, rail and highway transport, pipelines, banks, broadcasting and telecommunications, uranium mines, marine transport and related services.

Some 40 Crown corporations and agencies, Indian reserves, and the entire federal public service are also subject to the *Code*. Enforcement and administration of the *Canada Labour Code* comes under the responsibility of the Labour Program of Human Resources and Skills Development Canada in partnership with Transport Canada and the National Energy Board.

Transport Canada is responsible for on-board employees in the aviation, marine and rail sectors under federal jurisdiction, while the National Energy Board is responsible for employees in the oil and gas sector under federal jurisdiction."

Subjects treated

- Duties of Employers

- Duties of Employees

- Work Place Health and Safety Committees

- Policy Health and Safety Committees

- Health and Safety Representatives

- Canada Occupational Health and Safety Regulations*

- Three Basic Rights: Right to Know, Right to Participate, Right to Refuse

- Internal Complaint Resolution Process

- Health and Safety Officer

- Offences and Punishment

- Monthly Inspection

Purpose of Part II of the *Canada Labour Code*

Under subsection 122.1, the purpose of the *Canada Labour Code*, Part II is to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment to which this Part applies.

Under subsection 122.2, preventive measures should consist first of the elimination of hazards, then the reduction of hazards and finally, the provision of personal protective equipment, clothing, devices or materials, all with the goal of ensuring the health and safety of employees.

Application

Occupational health and safety legislation in the federal jurisdiction has been consolidated under Part II of the *Canada Labour Code*. The *Code* applies to the following interprovincial and international industries:

- banks;
- railways, highway and air transport;
- ferries, tunnels, bridges and canals;
- telephone and telegraph systems;
- pipelines;
- radio and television broadcasting and cable systems;
- shipping and shipping services;
- employment in the operation of ships, trains and aircraft;
- grain elevators licensed by the Canadian Grain Commission, and certain feed mills and feed warehouses, flour mills, and grain seed cleaning plants;
- federal public service and persons employed by the public service and about 40 Crown corporations and agencies;
- indian reserves; and
- exploration and development of petroleum on lands subject to federal jurisdiction.

Note: Part II of the *Canada Labour Code* **does not apply** to certain undertakings regulated by the *Nuclear Safety and Control Act*.

Duties of Employers

Under section 124 of the *Code*, employers have a general obligation or duty to ensure that the health and safety of every person employed by the employer is protected while they are working.

Also, under subsection 125. (1), employers have specific duties in regards to each work place they control and every work activity under their authority that occurs in a work place that is beyond the employer's control.

Duties of Employees

Under subsection 126. (1), the *Canada Labour Code*, Part II places several obligations on employees, all of which have the goal of preventing occupational related injuries and diseases. Employees have a responsibility to take all reasonable and necessary precautions to ensure their health and safety and that of anyone else who may be affected by their work or activities.

Nobody knows a work place better than the people who work in it. Part II of the *Code* gives the work place parties a strong role in the identification and resolution of health and safety concerns.

The provisions of the *Code* are designed to strengthen employers' and employees' self-reliance to effectively deal with occupational health and safety issues and, in so doing, make work places safer.

Work Place Health and Safety Committees

Work place health and safety committees must be established in work places where there are 20 or more employees. At least half of the committee members must be employees who do not have managerial functions.

Each work place health and safety committee is required to meet 9 times a year, at regular intervals and during regular working hours. If circumstances make additional meetings necessary, they should be held during or outside regular hours, whatever is required.

There are several powers and duties. The work place health and safety committee will:

- consider and expeditiously dispose of health and safety complaints;
- participate in the implementation and monitoring of programs for the prevention of work place hazards;
- participate in the development, implementation and monitoring of programs to prevent work place hazards, if there is no policy committee in the organization;
- participate in all of the inquiries, investigations, studies, and inspections pertaining to employee health and safety;
- participate in the implementation and monitoring of a program for the provision of personal protective equipment, clothing, devices, or materials,

and, if there is no policy committee, participate in the development of the program;

ensure that adequate records are kept on work accidents, injuries and health hazards;

cooperate with health and safety officers;

participate in the implementation of changes that may affect occupational health and safety, including work processes and procedures, and, if there is no policy committee, participate in the planning of the implementation of those changes;

assist the employer in investigating and assessing the exposure of employees to hazardous substances;

inspect each month all or part of the work place, so that every part of the work place is inspected at least once a year; and

participate in the development of health and safety policies and programs, if there is no policy committee.

The committee may request from an employer any information that it considers necessary to address work place hazards. It has full access to all government and employer reports, studies and tests relating to the health and safety of employees. Of course, it does not have access to an individual's medical records without the individual's consent.

Policy Health and Safety Committees

Policy health and safety committees must be established where an employer has 300 or more employees. The intent of this committee is to take a more strategic approach to health and safety in an organization by dealing with global issues.

The policy committee consists of at least two members. The employer appoints members in accordance with the following conditions.

Half of the members of the committee are to be employees who do not exercise managerial functions. These members are to be selected by the trade union representing the employees.

If the employees are not members of a union, then the employees at large will select their representatives on the policy committee.

If a collective agreement allows, the membership of a policy committee may include people who are not employees.

The policy committee will be led by two chairpersons. One will be selected by the employer members and the other by the employee members.

Terms of office for committee members are not to exceed two years.

There are several duties. The policy committee will:

- assist in the development of health and safety policies and programs;
- deal with matters raised by members and those referred to it by a work place committee or health and safety representative;
- participate in the development and monitoring of a program for the prevention of work place hazards, according to regulations, that also provides for the health and safety education of employees;
- participate in inquiries, studies, investigations and inspections as it considers necessary;
- monitor data on work accidents, injuries and health hazards;
- participate in the development and monitoring of a program, if any, for the provision of personal protective equipment, clothing, devices or materials;
- and
- participate in the planning of the implementation, and in the actual implementation, of changes that may affect health and safety, including work processes and procedures.

The policy committee has access to all government and employer reports, studies and tests relating to the health and safety of employees. It can request from the employer any information it considers necessary to identify existing or potential hazards with respect to materials, processes, equipment or activities in any of the employer's work places.

The legislation requires that a policy committee meet at least quarterly during regular working hours. If additional meetings are necessary, the committee can meet during or outside regular working hours.

Health and Safety Representatives

In work places where there are fewer than 20 employees or in work places exempted from the committee requirement, there must be a health and safety representative.

The employees of the work place who do not exercise managerial functions select, from among those employees, the person to be appointed health and safety representative. If the employees are represented by a trade union, then the union selects the person to be appointed, after consulting any employees who are not in the union.

There are several powers and duties of the health and safety representative. He will:

- consider and expeditiously dispose of health and safety complaints;
- ensure that adequate records of work accidents, health hazards and the disposition of health and safety complaints are kept, and regularly monitor this data;
- meet with the employer as necessary to address health and safety issues;
- if there is no policy committee, participate in the development, implementation and monitoring of programs to prevent hazards in the work place, which also provide for the education of employees in health and safety;
- participate in all inquiries, investigations, studies, and inspections pertaining to the health and safety of employees;
- cooperate with health and safety officers;
- participate in the planning of the implementation of changes that may affect occupational health and safety, including work processes and procedures;
- inspect each month all or part of the work place, so that every part of the work place is inspected at least once each year;
- participate in the development of health and safety policies and programs;
- assist the employer in investigating and assessing the exposure of employees to hazardous substances; and
- participate in the implementation and monitoring of a program for the provision of personal protective equipment, clothing, devices or materials and, where there is no policy committee, participate in the development of the program.

A health and safety representative may request from an employer any information that the representative considers necessary to identify existing or potential hazards in the work place. The representative has full access to all government and employer reports, studies and tests relating to the health and safety of employees. Of course, the representative does not have access to the medical records of any individual except with the person's consent.

Canada Occupational Health and Safety Regulations

Generally speaking, the *Canada Labour Code* establishes the legislative framework and outlines the duties and responsibilities of the employer and employees pertaining to occupational health and safety.

The *Canada Occupational Health and Safety Regulations* identifies, in much greater detail, the specific requirements in order to ensure a healthy and safe

work place.

For example, the *Code* requires an employer to ensure that the levels of ventilation, lighting, temperature, humidity, sound and vibration are in accordance with prescribed standards. This in itself does not offer much guidance, therefore Part VI – Lighting of the *Regulation* provides the detail on levels of lighting in different workplaces.

Three Basic Rights

Part II of the *Canada Labour Code* provides an employee with three rights:

- Right to Know;
- Right to Participate;
- Right to Refuse.

Right to Know

Through the provisions of the *Code*, employees have the right to be informed of known or foreseeable hazards in the work place and to be provided with the information, instruction, training and supervision necessary to protect their health and safety.

This right to know is strengthened by ensuring that the methods of communication are appropriate for all employees, including employees with special needs.

Through their health and safety committees or representatives, employees are given the right to have access to government or employer reports relating to the health and safety of employees, but do not have access to medical records of any person except with that person's consent.

Right to Participate

As health and safety representatives or committee members, employees have the right and the responsibility to participate in identifying and correcting job-related health and safety concerns.

Employers who employ 300 or more employees are required to establish a policy health and safety committee. The purpose of the policy committee is to handle issues that are organization-wide in nature. Because these types of issues go beyond a single work place, there is a need for a more strategic or global approach for their resolution.

Part II of the *Canada Labour Code* further provides for employee participation through the use of an internal complaint resolution process.

Right to Refuse

An employee, at work, has the right to refuse dangerous work if he or she has reasonable cause to believe that:

- a condition exists at work that presents a danger to himself or herself;
- the use or operation of a machine or thing presents a danger to the employee or a co-worker;
- the performance of an activity constitutes a danger to the employee or to another employee.

In order for an employee to be protected by the *Code* when exercising the right to refuse, the employee must follow the proper procedure.

[Refusal to work table done in PDF format](#)

Right of Redress

The purpose of the right of redress is to protect employers from abuse of the right to refuse and protect employees from arbitrary discipline.

Exercise of the right of redress can only occur after a health and safety officer has deemed that a dangerous situation did not exist.

The burden of proof is upon the employer to prove that the employee had abused his or her right to refuse to the *Canadian Industrial Relations Board* before disciplinary action can be carried out.

This provision in the *Code* is intended to balance the protection from abuse against the protection from arbitrary discipline.

Training

Under the *Code*, the employer provides, in the prescribed manner, each employee with the information, instruction, training and supervision necessary to ensure their health and safety at work;

- ensure that employees who have supervisory or managerial responsibilities are adequately trained in health and safety and are informed of the responsibilities they have under this Part where they act on behalf of their employer; and

- ensure that members of policy and work place committees and health and safety representatives receive the prescribed training in health and safety and are informed of their responsibilities.

The employer's managerial representatives should know, first, what their responsibilities are regarding health and safety, and second, how to address health and safety issues in a knowledgeable and informed manner. The increasing complexity of the work organization, the work processes and work materials requires that managers and supervisors receive the necessary training in health and safety.

Supervisors and managers, who act on behalf of their employer, should be adequately trained in and informed of their responsibilities in safe work practices and procedures, including any procedures, plans, policies, or programs that the employer is required to develop by the provisions of the *Code*.

Specifically, training should cover the duties of the employer, the duties of the employees, the three basic rights of employees, and procedures required by the *Code*, such as the steps to follow in cases of refusal to work, when complaints are filed, and when hazardous occurrences need to be investigated.

Compliance with the *Code* can be achieved through ongoing programs of instruction in the requirements of the legislation and in work practices and procedures specific to the particular work place.

Methods of instruction can include lectures, films, hands-on demonstrations, and information materials of various kinds. The extensiveness of the training is dependent on the work practices and procedures particular to the work place. For example, it is important and essential to explain appropriate lifting and carrying techniques and work procedures to supervisors and managers in warehouses.

For work places with more and greater hazards, such as grain elevators, rail shops, repair garages, and places where toxic substances are used, it would be necessary to provide supervisors and managers with lengthier, more detailed instruction.

With respect to the duties of the employer and of the employees, and the basic rights of the employees, a lecture or an information session would normally be seen as basic training.

Internal Complaint Resolution Process

It has been widely held that the work place parties (employer and employees) are more knowledgeable regarding hazards that may exist in the work place and have a greater vested interest in dealing with these issues.

The legislative framework establishes a process that allows for a graduated series of investigations to resolve work place issues while maintaining employment safety. The process allows for the resolution of work place health and safety issues in a more timely and efficient manner and reinforces the

concept of the internal responsibility system.

The process provides the employer/supervisor with the opportunity to address and correct employee concerns without the need to involve the work place health and safety committee, the health and safety representative or a health and safety officer.

The first step for the health and safety officer will be to ensure the internal complaint resolution process has been followed.

The health and safety officer will then investigate the matter and:

- may issue a direction to the employer or employee if a contravention to the *Code* is identified;

- may, if the officer considers it appropriate, ask the employer and employee to resolve the matter between themselves; and

- will issue a direction if the officer concludes that a danger exists.

An employee cannot be disciplined for exercising his or her rights or fulfilling a duty under the *Code* as long as the employee has acted in accordance with the *Code*.

Health and Safety Officer

In the context of the *Canada Labour Code*, a health and safety officer is a person appointed by the Minister of Labour.

The health and safety officer may, as part of his or her duties:

- enter any work place at any reasonable time;

- conduct, or have conducted, tests, examinations, inquiries, investigations or inspections;

- take or remove for analysis, samples of any material or substance;

- be accompanied or assisted by any person and bring any equipment the officer deems necessary;

- take or remove for testing, material or equipment;

- take photographs and make sketches of the work place; and

- meet with any person in private, or when requested by the person, in the presence of legal counsel or union representation.

The health and safety officer also has the power to direct:

the employer, to ensure a certain area or thing is not disturbed pending the officer's investigation;

any person, not to disturb a certain area or thing pending the officer's investigation;

the employer, to produce documents and information relating to the health and safety of the employees or the work place and to allow the officer to make copies of those documents;

the employer or an employee, to make or provide statements respecting working conditions, material, and equipment affecting the health and safety of employees in the work place; and

the employer or an employee, to accompany the officer while the officer is in the work place.

A health and safety officer may issue directions whether or not the officer is in the work place. As a final step, a health and safety officer will recommend prosecution for non-compliance with his or her direction.

Offences and Punishment

The *Canada Labour Code* and its regulations can be enforced through fines according to the seriousness of the offence.

Criminal offences include those in the *Criminal Code*, such as criminal negligence causing death or bodily harm. To complement these, Part II of the *Code* defines as a criminal offence the wilful breach of health and safety standards when the person in breach knows that serious injury or death is likely. This offence, unlike those in the *Criminal Code*, does not require that someone actually be hurt. Such offences can lead to imprisonment.

Maximum financial penalties for offences under Part II of the *Code* range from \$100,000 to \$1,000,000.

In the prosecution of a person for a contravention of any provision, except paragraph 125. (1)(c) and (z.10) and (z.11) it is a defence for the person to prove that the person exercised due care and diligence to avoid the contravention.

The Minister of Labour may seek an injunction where there is serious risk or where a fine would not be an effective way of achieving compliance with the *Code*.

Monthly Inspection

Part II of the *Canada Labour Code* states that it is every employer's duty to protect the health and safety of every employee while at work.

Under paragraph 125. (1)(z.12) the employer ensures that the work place committee or the health and safety representative inspects each month all or part of the work place, so that **every part of the work place is inspected at least once each year.**

Conclusion

"Preventing work-related accidents and occupational diseases is a daily challenge which demands the cooperation of everyone.

The evolution of the Canada Labour Code is the result of a consensus between workers and employers. By increasing the responsibility of employees and the employers for health and safety, the Canada Labour Code provides the tools necessary to improve safety on the job.

Investing in accident prevention in the workplace is one of the best means of ensuring a healthier and safer working environment."