



Alberta Federation of Labour

Introduction

Negative coverage of Alberta's occupational health and safety (OH&S) laws and practices percolated in the news throughout 2010. This paper will propose legislative and policy changes that will function as a starting point in addressing Alberta's poor record in making sure all workers are safe and healthy. The paper will propose several ways in which the labour movement can keep occupational health and safety on the public agenda through 2011 and beyond.

Alberta's Economy and Occupational Health and Safety

Alberta has special challenges with respect to occupational health and safety. Even if government was inclined toward tough, proactive legislation and policy on occupational health and safety, our province would still be somewhat different than other jurisdictions because of the type of economy we have. Our economic activity – and therefore the bulk of jobs – is concentrated in a few sectors (petroleum development, construction trades, transportation, manufacturing and processing) that are inherently more dangerous than other industrial sectors.

This is why Alberta should be a national leader in occupational health and safety, not a laggard. However, Alberta spends less than other jurisdictions on health and safety, and the brutal cuts that government made in the 1990s have yet to be restored. A 2010 Alberta Federation of Labour (AFL) study showed Alberta cut OH&S programs sharply in the 1990s. In 1991, the government of Alberta spent \$11.14 per worker on occupational health and safety programs; in 2009, we spent \$10.13 per worker.

Alberta spends less than some other jurisdictions on worker health and safety programs. In 2009, Ontario spent \$10.80 per worker, Nova Scotia \$13.61, and Manitoba \$11.73.¹

Since the 1990s, Alberta's economy has become more dependent on oil and gas and oil sands-related construction activity. While per-worker government spending on

¹ Budget Estimates, Government of Alberta, 1991 – 2010. 1991 figures from Executive Council estimates, budget actuals, Occupational Health and Safety. Sub-program: all education, inspection, compliance programs in occupational health and safety. 2009 figures from Alberta Employment and Immigration budget estimates, Occupational Health and Safety programs (legislation, technical support, and compliance/regional services), 2009 forecast spending. All Government of Alberta spending figures are adjusted for inflation. All figures are expressed in 2002 constant dollars, using the Alberta Consumer Price Index inflation multiplier. Figures are divided by labour force statistics, taken from Statistics Canada, CANSIM, Labour Force Survey (annual, adjusted for seasonality). v2367943 Alberta; Labour force (Persons); Total, all industries; Both sexes; 15 years and over. Spending figures for other provinces are adjusted to 2002 constant dollars using the Canadian Consumer Price Index inflation multiplier.

occupational health was in free fall, the number of Albertans working in construction, manufacturing, mining and/or oil and gas, and transportation – the industries responsible for the highest number of disabling injuries and fatalities – simultaneously grew by 50 per cent.

In 1991, 15 per cent (341,000 workers) of the Alberta workforce worked in the top four most dangerous industries. In 2009, 22 per cent (620,000 workers) of Albertans worked in the most dangerous industries.

Albertans are somewhat more likely to work in these dangerous industries than other Canadians. For example, 5.2 per cent of Albertans work directly in mining or oil and gas extraction industries, compared to 1 per cent of workers in the rest of Canada.²

Background: Alberta's Record on Occupational Health and Safety

Given our economic mix and scarce resources devoted to safe and healthy workplaces, Alberta is one of the most dangerous places in Canada to be a worker. There are several ways to measure Alberta's performance, and on every single indicator, Alberta performs poorly. Consider the following:

- In 2008, there were 8.91 deaths per 100,000 workers in Alberta. The national average was 7.14 deaths per 100,000 workers.
- There were 110 occupational deaths in Alberta in 2009. In 2008, Alberta posted an historic high of 166 occupational deaths (these figures include occupational disease fatalities accepted by the Workers' Compensation Board (WCB) and worksite fatalities as accepted by the WCB). Alberta consistently leads the country in number of occupational fatalities per number of workers.³
- Alberta's construction trades sector accounted for 34.4 per cent of worksite fatalities over the last 10 years.⁴
- Alberta is the only jurisdiction in Canada without mandatory joint health and safety committees.

² Definition of "dangerous occupation" from Alberta Employment and Immigration, Office of Official Statistics, Rates of Disabling Injury by Sector, 2008 (most recent available). Labour Force Statistics taken from Statistics Canada, CANSIM, Labour Force Survey (annual, adjusted for seasonality). Canada Tables v2363353 – v2363380; Alberta Tables v2367943 – v2367970.

³ Figures are taken from Association of Workers' Compensation Boards of Canada, Workplace Fatalities Accepted by Workers' Compensation Boards by Province and Territory, 1993-2008 (most recent available). Fatality figures were divided by labour force figures from Statistics Canada, CANSIM, Labour Force Survey (annual, adjusted for seasonality). v2367943 Alberta; Labour force (Persons); Total, all industries; Both sexes; 15 years and over.

⁴ Government of Alberta/WorkSafe Alberta. *Occupational Fatalities in Alberta, 2000-2009*. Summer 2010.

- Alberta is the only jurisdiction in Canada without health and safety protections for farm workers.
- Alberta does not have any protections for workers who blow the whistle on unsafe workplaces.
- Alberta is the only province in Canada where 12-year-olds can work in restaurants.
- Alberta has the lowest WCB premiums in Canada for industries that are responsible for the most worksite fatalities, occupational diseases, and disabling injuries. For example, oil and natural gas exploration companies pay just \$0.55/\$100 payroll, while companies in the rest of Canada pay four times as much, at \$2/\$100 payroll. Industrial construction companies in Alberta pay just \$2.04/\$100 payroll; in the rest of Canada companies pay more than double that, at \$4.30/\$100 payroll hour.

Alberta's Special Case: Low Union Density and a Boom-Bust Energy and Construction-Based Economy

At less than 25 per cent of the workforce, Alberta has the lowest rates of unionization in Canada.⁵ Low union density is due to the kind of economy we have, government spending as a percentage of the economy, and restrictive labour laws. The energy sector is one of the least unionized industrial sectors in the world, followed closely by financial services which are also a major part of the Alberta economy. Finally, restrictive labour laws make it more difficult for workers to join a union, and Alberta has some of the more restrictive labour laws in Canada.

What Alberta's low unionization rate means for occupational health and safety is that we have fewer voices for workers in government policy making. Review panels, consultations, and the like are far more likely to be industry dominated in Alberta. In other provinces, it is common for the heads of unions and federations of labour to meet monthly or quarterly with ministers of the crown, senior bureaucrats, and even the Premier. In Alberta, this kind of regularized consultation with organized workers – especially meaningful consultation – is rare.

A lack of meaningful consultation with labour leads to industry dominating all discussions of health and safety. For example, a 2008 forklift accident at a St. Alberta RONA store, involving a 15-year-old worker who was not trained to operate the forklift, has prompted a review of Alberta's forklift safety protocols. While the Alberta Federation of Labour was at the table for this review, the majority of the players were from industry. As a consequence, all of the proposed recommendations are voluntary, based on education, and discretionary. No real changes will come of the review, because there is no meaningful consultation with anyone who is telling the government to actually

⁵ Sylvain Schetagne, "The State of Canadian Unions in 2009-2010," Canadian Labour Congress, Presentation to CCPA/CLC Trade Union Research Collective, November 2010.

strengthen the laws (rather than issuing more suggested and voluntary guidelines) surrounding training for use of machinery like forklifts.

Fewer unionized workplaces also means that the positive “ripple effects” of unionization do not extend as far in Alberta as they do in other provinces. Research shows that higher union density in an economy boosts wages and working conditions for everyone – raising the playing field for non-union workers as well as those with representation. More union density means more likelihood of functioning joint worker-employer health and safety committees, more emphasis on training for new or young workers, lower rates of turnover and therefore less lost time and productivity due to lack of training and/or health and safety matters, and more communication between employers and workers on health and safety matters, whether at the committee or bargaining level.⁶

International research does show that unions do, in fact, make working conditions safer.⁷ But in Alberta, there has been another reason for increasing fatalities and more workplace accidents – the pace of economic development and the 2002-2007 oil-sands construction boom. The boom put pressure on all sectors to work faster, longer, and produce more. With a labour shortage in some sectors, many employers were constantly looking for ways to trim input costs, whether those were training costs, cost of steel, utilities, or raw materials, or any of the other skyrocketing costs of doing business in Alberta during the boom. This is an additional reason why the labour movement must take advantage of the current economic moment – a period of relatively slower development – in order to pause and reflect on what Alberta can do better in order to ensure we do not repeat the tragically high numbers of workplace fatalities when the economy booms again.

Occupational Death Statistics, Occupational Disease, and Under-Reporting

Research tells us that the Workers’ Compensation Board seriously under-reports the incidence of occupational illness, possibly by thousands of cases annually.

One of the reasons for under-reporting is that it is difficult to recognize or prove causation for many occupational illnesses. For example, the Alberta Cancer Board estimates that 8 per cent of all cancers are related to workplace hazards but the WCB only accepts a handful of cases each year.

Cross-provincial comparisons of reporting rates of mesothelioma show Alberta still has just a 42-per-cent rate of reporting of these illnesses to the WCB. When combined with

⁶ Lawrence Mishel with Matthew Walters, *How Unions Help All Workers*, EPI Briefing Paper #143 Aug. 2003; Henry S. Farber *Are Unions Still a Threat? Wages and the Decline of Unions, 1973-2001*, Princeton University Working Paper, 2002; Robert C. Johansson and Jay S. Coggins, “Union Density Effects in the Supermarket Industry,” *Journal of Labor Research* 23.4 (Fall 2002).

⁷ David Weil, “Enforcing OSHA: The Role of Labor Unions,” *Industrial Relations* 30.1 (1991): 20-36.

María Menéndez, Joan Benach, Laurent Vogel, *The impact of safety representatives on occupational health: A European perspective*, 2009.

known exposure to construction-related asbestos, research shows that cases of mesothelioma are almost entirely caused by one's occupation.

A recent report by Alberta Cancer Board investigators showed Alberta recorded a total of 568 histologically confirmed mesothelioma cases between 1980 and 2004. Forty-two per cent of cases filed a claim; 83 per cent of filed claims were accepted by the WCB for compensation.

The report concluded that patient under-reporting of compensable mesothelioma is a serious problem and raises larger questions regarding under-reporting of other asbestos-related cancers in Alberta. The Cancer Board recommended that the Workers' Compensation Board must focus on increasing filing rates.⁸

The Alberta Federation of Labour has ongoing concerns about the monitoring of occupational hazards causing long-term illness. The AFL applauds Alberta Employment and Immigration's 2009 announcement of a partnership with the Alberta Cancer Board for a more comprehensive review of workplace-related cancers and carcinogens. The Minister of Employment and Immigration also announced a new provincial commitment to occupational disease in late 2010 (without releasing details or costing), so it remains to be seen what kinds of action are being taken.

Unless the province pairs education with extra enforcement and an increased cost to employers who expose workers to toxins, the initiative will likely meet with little success. Limits on safe exposure levels to carcinogens likely also need tightening.

The AFL is calling for a fuller examination of occupational disease – including the impact of diesel fumes on construction, transportation, and energy industry workers – within the context of an expert panel on occupational health and safety. Occupational disease prevention should be examined in light of the oil-sands construction boom and appropriate preventative actions immediately enacted by the province.

Lost-Time Statistics and Disabling Injury Statistics

In recent years, Alberta Employment and Immigration has begun an annual bragging ritual in which it announces reductions in Alberta's lost-time claim (LTC) rate, which somehow seeks to prove that Alberta workplaces are safer as a result. Like clockwork, LTC numbers are released and the Minister responsible holds a news conference. In 2010, the LTC statistical release was cynically timed to coincide with April 28th, the International Day of Mourning for Workers Killed or Injured on the Job.⁹

⁸ Department of Prevention, Alberta Cancer Board, Cree MW, Lalji M, Jiang B, Carriere KC. "Under-reporting of compensable mesothelioma in Alberta." *American Journal of Independent Medicine*. 52(7), July 2009. P. 526-33.

⁹ Government of Alberta News Release. "Provincial on-the-job injury rate hits record low." April 28, 2010. <http://alberta.ca/home/NewsFrame.cfm?ReleaseID=acn/201004/282264503E98A-FCD8-BACA-3E37103102A54BBD.html>

The lost-time claim rate is a WCB statistic measuring the number of injuries leading to time missed from work. However, lost time makes up only 15 per cent of total WCB claims, of which there are almost 175,000 in Alberta. The missing 85 per cent are injuries – either minor or serious – but the employer has a "modified work" program that prevents time away from work.

The lost-time claim rate is not a measure of safety. It is only a measure of how well an employer manages injuries after the fact.¹⁰

Disabling Injury Rates

In late April 2010, Alberta Employment and Immigration announced that Alberta's workplaces were safer because our disabling injury rates were down by 10 per cent.

However, disabling injury rates are based on reported injuries to the WCB, and international research shows injury reporting always dips during a recession.^{11 12} Alberta experienced 8-per-cent unemployment in 2009. The loss of jobs was highest among the most dangerous industries. In 2009, Alberta saw 35,000 jobs lost in manufacturing, 30,000 in oil and gas, and 20,000 in construction.

Numbers of actual on-site fatalities and injuries, and transparent disclosure of health and safety inspection reports, and use of stop-work and stop-use orders are a much better measure of actual safety in the workplace.

¹⁰ R. Cox and K. Lippel, "Falling through the legal cracks: The pitfalls of using workers' compensation data as indicators of work-related injuries and illnesses," *Policy and Practice in Health and Safety*, 6(2), 2008. 9-30.

¹¹ United States National Council on Compensation Insurance (NCCI) statistics show that workers' compensation claim frequency fell 4 per cent in 2009.

¹² US Bureau of Labor Statistics data show that more experienced employees have fewer and less severe workers' compensation claims: at normal employment levels, workers with less than one year of experience with an employer represent 25 per cent of the workforce, yet have 34 per cent of the lost-time claims and costs. Statistics from insurance giant Zurich International indicate that workers with less than one year of experience represent 38 per cent of lost-time claims and 43 per cent of lost-time claim costs. Other theories that explain decreases in claims frequency tend to be more psychological in nature. In difficult economic times, employees who are injured on the job may work through their injuries rather than report them and take time off to recover. The fear is that, when they do recover and return to work, they may be targeted by management if there is another round of layoffs. The anxiety of being unemployed and trying to find another job during a recession may be enough to keep some employees from reporting injuries that they should have reported, and probably would have during better economic times. Source: "Recession, Recovery, and Workers' Compensation Claims," Zurich Insurance, 2010.

Alberta Federation of Labour Recommendations for Safer Workplaces:

A 10-point Plan and an Expert Advisory Panel on Occupational Health and Safety

The Alberta Federation of Labour is proposing a 10-point plan to address the immediate crisis in occupational health and safety in our province. The 10-point plan is explained in detail below. Further, we are proposing an Expert Panel on Health and Safety that would report to the Legislature. The Panel would be comprised of labour, industry, small business, and academic experts in the field, would not be industry-dominated, and would report to Albertans within tight timelines. The Panel would be structured such that the government of Alberta would have to respond to its recommendations within reasonable timelines, and provide justification for rejecting recommendations. A similar kind of expert panel formed the response to a string of workplace fatalities in Ontario, and resulted in consensus between labour, industry, and small business.

Such a panel should consider “made-in-Alberta” solutions to our health and safety crisis, taking into account Alberta's unique economy, number of workers engaged in dangerous work, and overall low rates of unionization.

The AFL 10-point Plan

I. Posting Workplace Safety Records – For Real This Time.

As we have seen, the lost-time claim rate is a very poor way to measure the safety of a workplace. In fact, it tells workers nothing at all about an employer's safety record.

Serious questions have been raised about Alberta Employment and Immigration's publication of safety records online – so serious, in fact, that the labour movement considers this to be a broken promise on the part of the Minister responsible. The government had been promising to post employer safety records online for almost a decade. But what Albertans got was a flawed, incomplete mish-mash of statistics, a watered-down, futile exercise as a result of industry pressure to go back on a promise to workers that there would be more transparency from the Ministry.

Flaws in the database include:

- An AFL analysis of the database took names of companies charged under the *Occupational Health and Safety Act* and the *Employment Standards Code* and searched the new safety records website for information on those companies.
- The analysis found, for example, that companies facing charges for alleged offences involving fatalities and/or serious injuries come up with "no results found."

- For example, Clayton Construction Limited faces seven charges for an alleged offence involving a fatality in 2008, but there are no records in the database for this company. Canadian Natural Resources (CNRL) faces two charges from the same fatal event. CNRL has also been charged in relation to three other fatalities and three injuries – or six of the 31 active charges (20 per cent) listed by Alberta Employment and Immigration. A search of the site brings up three records CNRL, two of which have references to lost-time claims (LTCs) in 2008, and LTC rates marginally above the rates for the industry, but no reference is made to fatalities or charges.
- The lost-time claim statistic is an incomplete picture of how safe an employer is, but Alberta Employment and Immigration made the database even more useless to ordinary workers by refusing to report the LTCs for workplaces with fewer than 40 employees. This means hundreds of workplaces are left out of the online information.
- The website is shockingly incomplete. An analysis published by Edmonton's *Vue Weekly* showed that residential construction, one of the more dangerous industries in Alberta, had records for 503 employers, and WCB records show that four fatalities and 325 injury claims were reported from this industry in 2009. However, not a single employer was recorded as having a fatality or even an injury.¹³
- Because the website relies on WCB data, it leaves out hundreds of employers. The WCB Regulation has five pages of industries that do not pay into WCB, such as banking and finance, non-profit and charitable organizations, agriculture, many health-care institutions and public schools.
- The website fails to include the most important data – a full record of violations of the *Occupational Health and Safety Code*. There is no information on health and safety inspection reports or stop-work/stop-use orders issued by OH&S officers.

The Alberta Federation of Labour proposes the following changes to the safety records database in order to make it a real tool for accountability and transparency:

- The Ministry has a list of "targeted employers" – the worst of offenders. It should be published.
- The Ministry should also publish a complete range of data about employers—the total number of claims filed, number of worker or public complaints to the hotline, results of workplace inspections, number of orders issued and compliance records in a format allowing for ranking.
- All employers should be included in the database, not just those who are

¹³ Jason Foster, "Numbers in Context: Workers Need All the Information to Get Home Safely," *Vue Weekly*, October 13, 2010. http://vueweekly.com/front/story/numbers_in_context/

required to pay into WCB.

- The website should include a list of large farming/feedlot/commercial agriculture companies who have had injuries or deaths on their worksite.
- The website should include the total number of WCB claims filed for a particular employer.
- If there have been worker or public complaints to the safety hotline/online-tips form, the results of those complaint investigations should be made public.
- Results of the work conducted by occupational health and safety and employment standards inspections should be made public. This should include any information related to stop-work or stop-use orders, information on compliance, and employment standards violations.

2. More Resources for Prosecutions of Workplace Deaths and Injuries in Alberta

In mid-2010, the Alberta Federation of Labour analyzed Alberta's prosecutions and convictions for serious injuries and deaths in workplaces. Between 2006 and 2009, there were 142 fatalities directly on Alberta worksites.

Since 2009, there were 15 convictions for four fatalities and 12 injuries on Alberta worksites – a 2.8-per-cent conviction rate for worksite fatalities. If we add the 17 charges that are pending, Alberta prosecutes at a rate of 14.8 per cent.¹⁴

Since 2005, Alberta Justice cannot account for 8 of the 57 fines levied against employers, according to a 2010 Calgary Herald investigation into prosecutions/convictions. The average fine in 2009-2010 was \$112,296. The vast majority of 2009-2010 convictions were for incidents that occurred over four years ago.

All of the 2009-2010 convictions appear to be on guilty pleas, showing government's overall unwillingness to litigate OH&S cases. Prosecutions appear to occur in only the most egregious cases, when the crown has a 100-per-cent chance of winning. This signals a lack of willingness on the part of government to put any resources toward making employers accountable. This is in line with what a former Crown Prosecutor recently told the Calgary Herald, when she revealed that the Crown is "cherry-picking" cases, using too high of a legal threshold when deciding whether to lay charges.

Alberta's prosecution record was dramatically contrasted with Saskatchewan's approach in early 2011, when a Calgary Herald investigation showed Saskatchewan had completed 47 prosecutions compared to 11 in Alberta during the same time period. Adjusted for

¹⁴ All figures current as of December 2010. Figures are likely to change throughout 2011. Data is taken from Alberta Employment and Immigration – Occupational Health and Safety Prosecutions/Charges: <http://employment.alberta.ca/SFW/6750.html>

the size of the workforce, the research showed Saskatchewan, even with its “business friendly” government, prosecutes at a rate 20 times that of Alberta.¹⁵

Who Enforces OH&S legislation?

The legislation holds employers responsible to protect employee health and safety. Enforcement is carried out by inspectors from the government department responsible for health and safety in each jurisdiction. In some serious cases, charges may also be laid by police or crown attorneys under Section 217.1 of the *Canada Criminal Code* (also known as “Bill C-45” or the *Westray Act*). This section of the criminal code imposes a legal duty on employers and those who direct work to take reasonable measures to protect employees and public safety. If this duty is “wanton” or recklessly disregarded and bodily harm or death results, an organization or individual could be charged with criminal negligence.

Invoking *Westray Act* criminal responsibility for workplace injuries or fatalities is the responsibility of the police and crown attorneys. The AFL takes the position that Alberta’s occupational health and safety inspectors, police and crown attorneys should be given the appropriate resources to investigate whether criminal charges under the *Westray Act* may apply in serious workplace incidents in Alberta.

3. Administrative Fines

More resources for occupational health and safety (more inspectors performing more inspections) should be accompanied by new ways to enforce the code.

Occupational health and safety inspectors should be able to issue tickets on-site for safety violations during proactive inspections. Furthermore, the AFL takes the position that it should be employers that are fined for safety violations, not workers.

Five other provinces (B.C., Manitoba, Ontario, Quebec and Nova Scotia) issue fines to employers who maintain unsafe worksites.

4. Reform the Certificate of Recognition System

Certificates of Recognition

What is a COR?

Alberta Employment and Immigration carries the overall responsibility for Certificates of Recognition (COR), a program for employers who implement appropriate health and

¹⁵ Bob Barnetson, Assistant Professor, Athabasca University. “Saskatchewan 20 times more likely to prosecute than Alberta,” <http://albertalabour.blogspot.com/> January 7, 2011. “Groups criticize Alberta Prosecution Rate for Workplace Incidents,” Edmonton Journal, Friday, January 11, 2011. <http://www.edmontonjournal.com/business/Groups+criticize+Alberta+prosecution+rate+workplace+incidents/4076450/story.html>

safety systems. Jointly with 14 certifying partners, the Ministry issues certificates and ensures that the database of employers with a valid COR is up-to-date. The WCB relies on this database to issue rebates to participating employers.

Employers who hold a valid COR are eligible for up to a 20-per-cent rebate of their WCB premiums under the WCB's Partners in Injury Reduction program. Major companies in such areas as oil and gas and construction require their contractors to hold a valid COR in order to bid for contracts.

What is the problem with Alberta's COR system?

In April 2010, Alberta's Auditor General (AG) found that a small but high-risk group of employers consistently fail to comply with OH&S orders, often despite numerous re-inspections by the Ministry. Employers with open and suspended OH&S orders had disabling injury rates that were three to four times the provincial average. The Auditor General did not find evidence of strong systems at Alberta Employment and Immigration to deliver appropriate enforcement action.

The Auditor General also found that half of employers that persistently fail to comply with the *Occupational Health and Safety Act* also continued to hold a valid Certificate of Recognition, and continued to have elevated injury rates among their workers.

In short, although these employers do not comply with OH&S orders, and their workers are much more likely to get injured on the job, these employers continue to receive Partners in Injury Reduction financial rebates and use their COR to bid on contracts with major companies in industries such as construction, and oil and gas.

An employer obtains a COR via a "certifying partner," which is a creature of industry (for example, Alberta Hotel Association, Alberta Forest Products Association, Alberta Construction Safety Association). The certifying partner coordinates the work of individual COR auditors. The Ministry conducts periodic reviews of certifying partners to ensure COR activities are consistent with program requirements.

However, the April 2010 report of Alberta's Auditor General found that Alberta Employment and Immigration assesses the work of auditors through a review of audit reports, but **does not** confirm the quality of fieldwork done by the auditors. The Ministry also does not adequately follow up on the recommendations it issues to certifying partners.

Given that the COR system is dominated by industry associations, it is not surprising that the Auditor General found the system to be ripe for abuse. According to the government, the COR initiative adopts a collaborative approach between the government and the industry. However, the 2010 Auditor General investigation showed what a "collaborative approach" with industry can actually mean – many companies receiving the privilege of a safety Certificate of Recognition, the right to bid on large

projects, and a WCB rebate even when they persistently break the law and maintain dangerous worksites where workers are injured.

Enforcement Actions

One of the reasons why employers who persistently flout OH&S orders and maintain unsafe worksites, with high levels of disabling injury, is simply that they can.

In April, the AG found that the Ministry's *Operational Procedures Manual* outlines actions to be taken when employers fail to comply with OH&S orders, but it does not always provide clear and specific criteria for when and how to take specific steps to fix the problem. The Manual does not provide a clear decision ladder for escalating compliance action from promotion and education to enforcement.

The Ministry does not use all tools at its disposal to enforce compliance. For instance, the Ministry does not apply for continued non-compliance to be forwarded to the Court of Queen's Bench for action. The Auditor General's investigation found at least 20 employers with open orders and 18 employers with suspended orders. Half of these employers held or still hold a valid Certificate of Recognition.

The COR system only works in the context of adequate inspections and willingness of the government to enforce its own rules. Without that, as we've seen, it falls apart.

5. Place Much Tighter Controls on Safety Bonuses, End WCB Incentives to Deny Claims and Raise WCB premiums

Safety Bonuses

The practice of awarding bonuses to workers, supervisors, or managers for meeting safety targets should be subjected to a comprehensive review with an eye to outlawing them entirely or placing very strict parameters around them.

Simply put, a bonus should not be given for rewarding a core value in the workplace. Bonuses should be for going above and beyond the basic goals and values of a workplace, not for meeting them. Following appropriate health and safety laws, codes, and practices should be considered a bare minimum requirement in any workplace, not an extra frill that results in a reward.

As the Canadian Auto Workers' 2003 policy on safety bonuses indicates: "Safety awards are often a "carrot" to reward good behaviour. However, the behaviour is almost always based exclusively on not reporting injuries, not going off on lost time and not making a claim to the Workers' Compensation Board. It is almost never on ensuring that a lock is

put on de-energized equipment that a guard is replaced on a machine after maintenance, or that unsafe work is refused until it is made safe.”¹⁶

WCB Incentives

Alberta companies, especially in the most dangerous industries, pay the lowest WCB premiums in Canada. In Alberta, oil and natural gas exploration companies pay just \$0.55/\$100 payroll, while companies in the rest of Canada pay four times as much, at \$2/\$100 payroll. Industrial construction companies in Alberta pay just \$2.04/\$100 payroll; in the rest of Canada companies pay more than double that, at \$4.30/\$100 payroll hour.

The WCB is like an insurance plan for employers. If you're a dangerous driver (or in a demographic group that is more likely to have a collision, such as young men under 25), you pay higher premiums. It should be the same logic that applies to WCB premiums for employers in dangerous industries. The WCB is an insurance plan for employers because participation in the WCB program means employers are protected from an injured worker's right to sue. When the Alberta WCB doesn't charge appropriate premiums, it doesn't have the funds to pay out claims. That means the WCB has a higher incentive to deny legitimate claims for coverage.

Alberta's WCB is also the only jurisdiction that allows incentives to be paid to WCB case workers if they make a practice of denying claims. In mid-2010, it was revealed that WCB workers receive up to \$5,000 per year for keeping the number of claims they accept below certain levels. The Alberta Federation of Labour has called for the practice to be abolished.

Raise WCB Premiums

Alberta has more people working in dangerous occupations than anywhere else in Canada. Alberta workers are three times more likely to be employed in a dangerous occupation. But our province charges far lower WCB premiums than in the rest of Canada, especially in the most dangerous industries. For example, industrial construction companies in Alberta pay just \$2.04/\$100 payroll hour; in the rest of Canada industrial construction companies pay more than double that, at \$4.30/\$100 payroll hour.

The most dangerous industries need to contribute a reasonable amount to the WCB system. Without reasonable contribution levels, injured workers cannot be assured that support will be there when they need it.

¹⁶ Canadian Auto Workers, “*Behavior-Based Safety Programs*,” 2003. www.caw.ca/assets/pdf/Behaviour_Based_Safety_Programs.pdf

6. Mandatory Joint Committees

The absence of mandatory joint worker-employer health and safety committees (JHSC) in Alberta is a glaring example of how our province refuses to enact simple changes proven to protect workers. We are the only province in Canada without mandatory joint committees. Alberta Employment and Immigration's refusal to move Alberta beyond being the national laggard on this health and safety issue goes a long way toward explaining why Alberta's record on the issue occupied so much media attention throughout 2010.

The Canadian Centre for Occupational Health and Safety – established by Canada's federal government – outlines three basic employee rights for Canadian workers:

1. the right to refuse unsafe work;
2. the right to participate in the workplace health and safety activities through Joint Health and Safety Committee (JHSC) or as a worker health and safety representative; and
3. the right to know, or the right to be informed about, actual and potential dangers in the workplace.¹⁷

Many Alberta workers do not enjoy one of three basic employee safety rights.

The Canadian Centre on Occupational Health and Safety lays out the roles and responsibilities of joint committees, including:

- Acting as an advisory body;
- Identifying hazards and obtain information about them;
- Recommending corrective actions;
- Assistance in resolving work refusal cases;
- Participation in accident investigations and workplace inspections; and
- Recommendations to management regarding actions required to resolve health and safety concerns.

In general, legislation in different jurisdictions across Canada state that health and safety committees or joint health and safety committees must be composed of one-half management and at least one-half labour representatives, must meet regularly, must be co-chaired by one management chairperson and worker chairperson, and employee representatives are elected or selected by the workers or their union.

Joint health and safety committees are not simply vehicles for communication and information-sharing. They also play an important role in mediating conflict, especially in

¹⁷ "OH&S Legislation in Canada - Basic Responsibilities," Canadian Centre for Occupational Health and Safety. <http://www.ccohs.ca/oshanswers/legisl/responsi.html>

situations where workers refuse unsafe work. For example, in other provinces, a JHSC member or employee representative is often involved in refusal to work investigations, and the employee returns to work if the problem is resolved with mutual agreement. If the problem is not resolved, a government health and safety inspector is called.

Of course, employees with union coverage are likely to have joint health and safety committees written into their collective agreements. However, Alberta has no mechanism to extend these committees – on a mandatory basis – to all employees regardless of their workplace representation.

Health and Safety and Temporary Foreign Workers

Alberta's workforce has changed considerably in the last five years. There are now over 60,000 temporary foreign workers in Alberta, many of whom are working in non-union retail, restaurant, and other low-paying occupations, where union representation is non-existent. The absence of mandatory joint health and safety committees places these workers at increasing risk of being asked to perform unsafe work (and not knowing it is their right to refuse), increasing risk of reprisal if they raise OH&S concerns, and restricts their access to information, education, and training on health and safety in the workplace.

7. Whistle-blower Legislation

The province of Ontario is the only provincial jurisdiction with specific protections for whistle-blowers written in to the *Occupational Health and Safety Code*.

The Code allows for an investigation of a worker's claim of reprisal for blowing the whistle on unsafe workplaces. However, the Ontario Expert Panel on OH&S found that those investigations often took far too long for appropriate resolution, and hearings and appeals sometimes take place thousands of kilometers from a worker's home.

The Ontario Expert Panel recommended several improvements to their OH&S whistle-blower protections, which are in any case the best example of this kind of legislation in Canada. In order for Alberta to rise to a "best practice" standard of protecting workers from reprisals for blowing the whistle on unsafe workplaces, the AFL recommends changes to Alberta's *Occupational Health and Safety Code* that include the following elements:

- Writing protection for workers who raise concerns about occupational health and safety from reprisal, including termination, into the *Occupational Health and Safety Code*;
- Empowering OH&S and/or employment standards officers to investigate a complaint of reprisal for whistle-blowing;
- Allowing OH&S and/or employment standards officers to issue orders for interim reinstatement pending a full investigation;

- Establishing a process for mediation of complaints if such an avenue is practicable;
- Establishing clear rules on referring complaints of reprisal to a special investigator and/or the Alberta Labour Relations Board (ALRB);
- Committing adequate resources to a hearings and resolution process, so that hearings can occur in communities closest to where the worker lives or works; and
- Creating either an office of special investigations for occupational health and safety, or expanding the Alberta Labour Relations Board to hear such cases, even from non-union employees (as is done in Ontario).

8. Farm Workers

Alberta is the only province in Canada that does not extend employment standards or occupational health and safety protections to farm workers. We should do so immediately.

9. More Resources for OH&S

Alberta Federation of Labour research has established Alberta's spending on occupational health and safety is below other provinces, despite the dominance of more dangerous industries in our economy. An expert panel review of our OH&S regime should examine appropriate improvements to OH&S budgets, through hiring more inspectors, allowing for more off-hours and unannounced inspections, more use of administrative fines, and more training programs offered to workers.

10. Working-alone Legislation

Alberta must have better provincial regulations that minimize the risks of working alone. Many other provinces – including Manitoba, Ontario, and British Columbia – have these kinds of rules. Working-alone legislation should:

- Require the employer to present a document, to be signed by the employee, detailing the hazards of working alone and how they have been addressed by the employer before the worker is permitted to work alone;
- Allow the worker to refuse to work alone if they feel their health and safety is at "substantial risk" due to the hazards of working alone;
- Give the Minister of Alberta Employment and Immigration the power to declare certain types of work as "high hazard" and that this work not be performed alone at any time; and
- Establish an "effective communication system" for workers to call out in an emergency, as well as a system for regular check-in by a person able to provide assistance.

A Long-term Strategy for Action

Alberta's dismal record on occupational health and safety can be chalked up to several factors, as summarized previously. First, we have a lax regulatory environment, reflecting the low priority government places on health and safety in Alberta workplaces. Second, we have lower rates of unionization and far lower levels of real consultation and engagement with a broad cross-section of workers on health and safety matters. Third, the structure of our economy is such that many more Albertans are engaged in higher-risk work than in other jurisdictions.

All of this suggests a made-in-Alberta response. From past experience, calling on the government to establish a committee of inquiry, a task force, or other government-sponsored investigation into issues of public concern can be a futile endeavour. The government of Alberta cannot be trusted to conduct a fulsome investigation of any issue that involves competing interests between ordinary people and corporations or industry lobby groups. A short list of abject failures of “consultation” by the Alberta Employment and Immigration should suffice to make the case:

- The industry-dominated panel charged with reviewing farm safety laws (after a provincial court judge recommended including farm workers in employment standards/occupational health and safety codes) – recommended the status quo – education as opposed to legal changes.
- The committee charged with reviewing forklift safety rules, after a 15-year-old employee died in St. Albert – has only recommended voluntary changes for employers, which is simply a more detailed status quo.
- A survey on changes to the *Fair Trading Act*, to protect temporary foreign workers from exploitation by unscrupulous recruiters and/or labour brokers thus far failed to produce a shred of help for TFWs.

Given the track record, calling on the government of Alberta to take a broader look at our province's occupational health and safety crisis can be a tricky recommendation. However, a full study of occupational health and safety – if the committee is appropriately balanced, given strict timelines, forced to report to the Legislature rather than the government, and instructed to make recommendations that involve meaningful statutory changes, not new guidelines or other half-measures – could contribute a great deal to the future of workplace health and safety in our province. Furthermore, the panel's composition must be balanced – with equal representation from labour, industry, and academics.

Alberta's version of an expert advisory panel should not only review occupational health and safety in general terms, but should also be asked to address the following question: Has the pace of development in the oil sands compromised worker and/or public safety and, if so, what steps should be taken to mitigate the problems?

Alberta's health and safety codes and practices have come under increasing negative scrutiny in recent months, but concrete action by the province has been slow. By contrast, similar negative attention and a string of horrific worksite fatalities in Ontario caused the government there to act far more swiftly than we have seen in this province. Ontario struck an expert advisory panel in March 2010, and the panel made a series of comprehensive recommendations by December.

Alberta must conduct a thorough review of the impact of the rapid pace of development and its impact on health and safety in the workplace before we head into yet another boom in the oil sands. If we do not, more lives will be lost, more workers will be injured or maimed, and Alberta's reputation as a safe place to work and do business will continue to be tarnished.

We know – everyone in Alberta knows – that many companies cut corners during boom times, when labour is in short supply, input material costs are rapidly escalating, and there are international pressures in getting projects finished quickly. The question is whether the government of Alberta will allow this situation to repeat itself yet again, with tragic results for so many workers and their families.

