Small and Medium Size Businesses

In all OHS matters special consideration should be given to small workplaces. Small workplaces are commonly recognized as problem areas for OHS as they tend to have higher injury and illness rates in comparison to larger firms in the same sectors. Workers at small worksites are often not unionized nor do they have a sense of the collective making these workers particularly vulnerable. As well, when small businesses are considered a family the pressure to ignore OHS issues is immense. This pressure can be even more when financial margins are slim and productivity is put ahead of OHS. It is therefore imperative that special consideration be given to small business when it comes to OHS matters.

One way that small businesses could be supported in properly developing and implementing both harassment and violence policies is through strong education and training from OHS Officers. This education and training role will need to transition to enforcement to ensure workers across various employers have similar experiences under our OHS laws and regulations.

Another potential resource for workers in small businesses may be the newly created Office of Fair Practices which is mainly designed to deal with Workers’ Compensation Board issues. The Office of Fair Practices will ideally already have experience working with small and medium size employers, and non-unionized workers and unionized workers where access to representation has been exhausted.

Review of the Policy

As with any provincial legislation and regulation regular reviews and updates should occur on an ongoing basis. Initially well thought out and articulated violence and harassment policies are not enough. A structured process by which knowledge and practices are improved and incorporated on a regular basis is at least as important. It is important that Alberta is prescriptive in the requirement to review the policies similar to many other jurisdictions are such as Ontario, British Columbia and Saskatchewan.

Saskatchewan’s OHS regulations currently require employer violence policies to be reviewed regularly:

37(6) An employer shall ensure that the policy statement required by subsection 14(1) of the Act is reviewed and, where necessary, revised every three years and whenever there is a change of circumstances that may affect the health and safety of workers.

We would support mandating a review of both harassment and violence policies in the workplace once every three years as well as whenever there is a change that may affect the health and safety of workers. We would add that policies changes should take place upon the recommendation of the Joint Work Site Health and Safety Committees or representatives, or as the outcome of an investigation into a harassment or violent incident at a worksite.
Updating policies as a result of investigations would help ensure that dysfunctional policies are not knowingly left in place and provide a great opportunity for workers and employers to work together through the JWSHSCs or the representatives.

**Ensuring Workers are Aware of Violence and Harassment Policies**

To ensure that both the harassment and violence policies in workplaces are effective, they must not only be well-crafted and regularly reviewed, but workers need to be made aware of the policies. Ontario, British Columbia, Manitoba, and Saskatchewan currently require that these policies are posted in written format in conspicuous places in the workplace. Further, Manitoba’s OHS regulations require employers to provide a copy of the violence prevention policy to each worker where posting the policy is not practicable.

**The Right to Know about Harassment and Violent Hazards**

The right for workers to know about safety hazards in their work environment is one of the three pillars of any quality occupational health and safety program. Any regulations in Alberta around both harassment and violence need to enshrine the right to know and ensure workers have access to the information they need to stay safe on a jobsite.

Many other jurisdictions in Canada spell out in their OHS Acts and regulations clear requirements that employers provide workers with all relevant information they have in their possession on workplaces hazards. There should be no difference when it comes to hazards of harassment and violence in the workplace.

Currently Manitoba’s OHS Act and Regulation requires that any violence prevention policy include:

11.4(a) a description of (i) any particular worksite at the workplace where an incident of violence has occurred or may reasonably be expected to occur, and (ii) any particular job functions at the workplace where the worker performing the function has been, or may reasonably be expected to be, exposed to incidents of violence.

Section 11.5 of the Manitoba legislation also includes:

11.5(2) Unless otherwise prohibited by law, the duty to inform a worker about the risk of violence under clause (1) (b) includes a duty to provide any information in the employer’s possession, including personal information, related to the risk of violence from persons who have a history of violent behaviour and whom workers are likely to encounter in the course of their work.

11.5(3) The personal information provided under clause (1) (b) must be the minimum amount necessary to accomplish the purpose.

Both Saskatchewan and Ontario have similar regulations that require employers to notify workers of known hazards when it comes to violence in the workplace. Saskatchewan goes further than Manitoba to include locations and staff positions that would reasonably expose a worker to violence.

One area that needs further attention is when a person who has a history of violence or harassment is transferred from one worksite to another. Alberta’s regulations on these
policies should include a duty of employers to share the relevant information regarding a person with a known history of violence or harassment moving from one worksite to another or from one part of a worksite to another. As well, there should be a duty for the employers to seek out this information to inform their workforce when they are accepting a transfer. This requirement should also apply to service providers, contractors and subcontractors to help ensure workers at all levels receive the necessary information to be safe at work.

**Violence and Harassment Policy Content**

We applaud the Government of Alberta’s changes to the OHS Act which now include provisions for both violence and harassment. Further, we are optimistic with the proposed OHS regulation requirements of what should be included in both the harassment and violence policies. However, when reviewing the regulated requirements from other provinces there are some noticeable gaps in what is being proposed as regulation in Alberta and what other provinces currently have.

**Harassment**

The proposed regulations according to the discussion guide would require harassment policies to include the following:

- How to report an incident of harassment by a worker who has been exposed to harassment to the employer, including when an incident is to be reported.
- Procedures the employer will follow to document, investigate and prevent any incident of harassment that the employer is aware of.
- A commitment that the employer will ensure privacy of the complainant and alleged offender, and take corrective action respecting any person under the employer’s direction who subjects any worker to harassment.
- A statement that the employer’s harassment policy is not intended to discourage workers from exercising any other legal rights including addressing complaints to the Alberta Human Rights Commission.
- An employer must ensure that a worker who has been harmed as a result of an incident of harassment at the workplace is advised to consult the worker’s health care provider for treatment or referral for post-incident counselling, if appropriate and this would be considered time at work.

In Ontario an employer policy on harassment must include the following:

32.0.6 (2) Without limiting the generality of subsection (1), the program shall,

(a) include measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor;
(b) include measures and procedures for workers to report incidents of workplace harassment to a person other than the employer or supervisor, if the employer or supervisor is the alleged harasser;
(c) set out how incidents or complaints of workplace harassment will be investigated and dealt with;
(d) set out how information obtained about an incident or complaint of workplace harassment, including identifying information about any individuals involved, will not be disclosed unless the disclosure is necessary
for the purposes of investigating or taking corrective action with respect to
the incident or complaint, or is otherwise required by law;
(e) set out how a worker who has allegedly experienced workplace
harassment and the alleged harasser, if he or she is a worker of the employer,
will be informed of the results of the investigation and of any corrective
action that has been taken or that will be taken as a result of the
investigation; and
(f) include any prescribed elements.

Ontario also includes a section in their regulations outlining the duties of employers in
regards to harassment. These duties include:

32.0.7 (1) To protect a worker from workplace harassment, an employer shall ensure
that,
(a) an investigation is conducted into incidents and complaints of workplace
harassment that is appropriate in the circumstances;
(b) the worker who has allegedly experienced workplace harassment and the
alleged harasser, if he or she is a worker of the employer, are informed in
writing of the results of the investigation and of any corrective action that
has been taken or that will be taken as a result of the investigation;

In our view, the more prescriptive the OHS regulations are in regards to harassment policies
the more robust the harassment policies in Alberta workplaces will be. Ideally, these
requirements would also include a draft policy example from which employers can build
their own harassment policies. It is also important that workers who complain of harassment
are made aware of any workplace changes as a result of their harassment complaint which
could include personal protective equipment, administrative controls or engineering controls
among other changes.

Violence

The proposed regulations for Alberta according to the discussion guide would require
violence policies to include the following:

• A commitment that the employer will take corrective action respecting any person
under the employer’s direction who subjects any worker to violence.
• A commitment that the employer will not disclose the name of the complainant, of
the alleged offender, or of the circumstances related to the complaint; except where
necessary to investigate the complaint, to take corrective action, or as required by
law.
• A statement that the employer’s violence prevention policy is not intended to
discourage workers from exercising any other legal rights including lodging a
complaint with police or other law enforcement.
• Actions and measures the employer will take to eliminate or control the risk of
violence.
• Procedures for workers to get immediate assistance when an incident of violence
occurs and to report a violent incident.
• Procedures the employer will follow to document, investigate and prevent an incident, and implement any control measures identified as a result of the investigation to eliminate or control the risk of worker violence.

• Regarding domestic violence in the workplace, the employer must take every reasonable precaution to protect the worker and those affected at the work site.

• An employer must ensure that a worker is advised to consult a health professional of the worker’s choice for treatment or referral if the worker reports an injury or adverse symptom resulting from workplace violence or exposure to workplace violence this would be considered time at work.

Overall, the requirements for contents of the violence policy in the proposed regulations are more robust than the proposed regulations for the harassment policy. What is concerning about the proposed violence policy requirements is that the employer would only be required to take corrective action respecting any person under the employer’s direction who subjects any worker to violence. We must also recognize that sources of violence are greatly varied and include clients, customers, members of the public as well as contractors and subcontractors. It is ultimately the employer’s responsibility to control hazards in the worksite and therefore they should also be responsible for responding to sources of violence beyond people under their direction. Obviously their responses to sources of violence will vary depending on the source but Alberta should be clear in our regulations that the responsibility still lays with employers to take action regardless of the sources of violence.

Manitoba’s regulations around violence prevention also include;

11.4 A violence prevention policy must set out the actions and measures the employer will take to eliminate the risk of violence to a worker or to control that risk if it is not reasonably practicable to eliminate it. Without limitation, the violence prevention policy must include

(a) a description of
(i) any particular worksite at the workplace where an incident of violence has occurred or may reasonably be expected to occur, and
(ii) any particular job functions at the workplace where the worker performing the function has been, or may reasonably be expected to be, exposed to incidents of violence;

(b) the measures that the employer must implement to eliminate the risk of violence to a worker at the workplace, or to control that risk if it is not reasonably practicable to eliminate it;

(c) the measures and procedures that the employer has in place for summoning immediate assistance when an incident of violence occurs or is likely to occur;

(d) the procedure a worker is to follow in reporting an incident of violence to the employer, including how and when an incident is to be reported;

(e) the procedure the employer will follow to document and investigate any incident of violence to a worker that the employer becomes aware of;

(f) the procedure the employer will follow to implement any control measures identified as a result of the investigation that will eliminate or control the risk of violence to a worker;

(g) a recommendation that a worker who has been harmed as a result of an incident of violence at the workplace is advised to consult the worker’s health
care provider for treatment or referral for post-incident counselling, if appropriate;

An additional area missing from the requirements of what to include in the violence prevention policies in Alberta is a requirement to train staff on how to respond to violence situations. Currently, Saskatchewan’s OHS regulations require employer violence policies to include:

37(3) the employer’s commitment to provide a training program for workers that includes:
   (i) the means to recognize potentially violent situations
   (ii) procedures, work practices, administrative arrangements and engineering controls that have been developed to minimize or eliminate the risk to workers.
   (iii) the appropriate responses of workers to incidents of violence, including how to obtain assistance; and
   (iv) procedures for reporting violent incidents.

A robust violence prevention policy should always include an education component for workers to be trained in the appropriate responses to violent situations. To ensure a strong education component for workers to be trained we strongly encourage adding a duty for employers to ensure that information is received by workers. This duty should include a proper assessment acknowledging the language workers understand as well as their literacy levels. All health and safety information should be delivered to workers in a meaningful way so they fully understand. The onus to ensure workers understand should be on the employer. Lastly, we understand that some employers may contract out duties or obligations from either their harassment or violence prevention programs to third party contractors, for example, hiring a contractor to carry out the investigation. Where an employer contracts out the investigative role for violence and harassment the employer has a responsibility to ensure the contractor is following the policies and procedures developed by the employer. The employer also has a responsibility to acknowledge and justify changes or lack of changes recommended by the contractor after the investigation is complete.

**Reporting to the Joint Work Site Health and Safety Committee**

Currently Manitoba requires the employer to provide an annual report to their health and safety committee or health and safety representative that compiles records of violence, results of any investigations, and recommendations for control measures or changes to the applicable policies. We recommend these reports should be made to the committee every 6 months to ensure the committee can respond to issues in a timely manner.

Manitoba’s current regulations state:

11.7(1) Annually, the employer must prepare a report that compiles
   (a) the records of the incidents of violence to a worker in the workplace, if any;
   (b) the results of any investigation into an incident of violence, including a copy of
      (i) any recommendations for control measures of changes to the violence prevention policy, and
(ii) any report prepared under section 2.9 in respect of such an incident; and

c) the control measures, if any, implemented as a result of an investigation into an incident.

11.7(2) The annual report respecting violence in the workplace must be provided to

(a) the committee at the workplace;

(b) the representative at the workplace; and

(c) when there is no committee or representative, the workers at the workplace.

**Violence Workplace Assessments**

Violence Workplace Assessments, as done in Ontario and British Columbia, would be a helpful tool for Alberta employers to implement robust harassment and violence prevention policies.

In Ontario, the assessments are divided into three parts: general physical environment assessment; risk factor selection tool; and assessments for specific risks. The general environment assessment is a first step to help employers survey their physical environments and security measures currently in place on a worksite. The risk factor selection tool is then used to identify risks that would be specific to a worksite. The assessment for specific risks helps employers draft responses to specific worksite risks such as direct contact with clients, cash handling, or working alone among other risks.

British Columbia’s regulations section 4.28 requires that a risk assessment is performed in any workplace in which a risk of injury to workers from violence arising out of their employment may be present. The risk assessments must include consideration of previous experiences in the workplace, occupational experience in similar workplaces and the location and circumstances in which the work will take place.

British Columbia’s OHS policy provides more details for the factors that employers need to include when conducting their risk assessments such as: previous violent incidents; layout of the workplace; age, gender, experience, skills and training of the workforce; and communications methods among others.

Overall, these risk assessment tools would help ensure that employers are focusing on the risks of violence faced on their worksites and help guide them in addressing these risks with robust violence prevention policies.

**Seeking Treatment for Harm Caused by Violence and Harassment**

We commend the government’s recommendations that when a worker has been harmed as a result of an incident of harassment and violence that the worker is advised to consult a health professional of the worker’s choice for treatment or referral if the worker reports an injury or adverse symptom and that this time would be considered time at work. We are reluctant to see the potential benefit of limiting worker’s choice in this matter as some employers may insist a worker only access a health professional of the employer’s choice.

First, workers should be able to access health professionals appropriate to their needs. Second, there should be no limits on health professionals workers can access to ensure there is no contraventions with the WCB Act and a worker’s right to access the WCB system. Ultimately, workers who are harmed as a result of an incident of harassment or violence on a worksite have a right to access WCB and this right should in no way be hindered by employers attempting to restrict which health professionals to which workers have access.
Joint Work Site Health and Safety Councils

Consultation on Occupational Hygiene Testing

Other jurisdictions, such as Ontario and Saskatchewan, allow committee members to be present and consulted regarding various occupational hygiene testing. This is important to ensuring proper testing strategies and validating the results of those tests. We recommend Alberta adopt Ontario’s approach to ensuring consultation and participation with JWSHSCs in planning and enacting occupational hygiene testing.

Ontario currently requires:
11(1) The constructor or employer at a workplace shall consult a health and safety representative or the committee with respect to proposed testing strategies for investigating industrial hygiene at the workplace.
(2) The constructor or employer shall provide information to a health and safety representative or the committee concerning testing strategies to be used to investigate industrial hygiene at the workplace.
(3) A health and safety representative or a designated committee members representing workers at the workplace is entitled to be present at the beginning of testing conducted with respect to industrial hygiene at the workplace if the representative or members believe his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid.

Non-Consensus on JWSHSC

In the course of their duties, it is likely that committees will not always reach consensus. Procedures to deal with non-consensus are needed to ensure that the committee members can continue to do their work and act on pressing issues. In instances where a Collective Bargaining Agreement (CBA) are present, procedures under the CBA could also be used. We suggest wording similar to what is currently in place in Ontario:
If the committee has failed to reach consensus about making recommendations after attempting in good faith to do so, any committee member has the power to make written recommendations to the constructor or employer.

Access to WCB information

Ontario allows their health and safety committees access to the employer’s records from WSIB so they can make informed decisions based on recorded illnesses and injuries. Alberta should adopt this model to ensure JWSHSC are equipped with all relevant information. Currently Ontario requires:
12(1) For workplaces to which the insurance plan established under the Workplace Safety and Insurance Act, 1997 applies, the Workplace Safety and Insurance Board, upon the request of an employer, a worker, committee, health and safety representative or trade union, shall send to the employer, and to the worker, committee, health and safety representative or trade union requesting the information an annual summary of data relating to the employer in respect of the number of work accident fatalities, the number of lost work day cases, the number of lost work days, the number of non-fatal cases that required medical aid without lost
work days, the incident of occupational illness, the number of occupational injuries, and such other data as the Board may consider necessary or advisable.

Posting a copy of the summary

(2) Upon receipt of the annual summary, the employer shall cause a copy thereof to be posted in a conspicuous place or places at the workplace where it is most likely to come to the attention of the workers.

**JWSHSC Access to Communications and Information**

To function effectively JWSHSC need to have access to all information that is relevant to their work site. Ontario currently mandates that the employer share copies of all orders and reports issued by a Ministry of Labour inspector or representative. Correspondence and information regarding variances, OHS notices, compliances and letters of acceptance must be shared with the committee to ensure it can achieve its purpose in the workplace. This allows the committee to fully participate in OHS matters. In worksites with a union, consultation and information sharing should include the union as well.

**JWSHSC Access to OHS Related Training**

Full access to information is needed for JWSHSC to be effective, which includes full access to any and all OHS related training provided by the employer to workers on a site. Ontario has provisions within their OHS regulation which ensures:

**Instruction and training**

42(1) In addition to providing information and instruction to a worker as required by clause 25 (2) (a), an employer shall ensure that a worker exposed or likely to be exposed to a hazardous material or to a hazardous physical agent receives, and that the worker participates in, such instruction and training as may be prescribed.

**Consultation**

42(2) The instruction and training to be given under subsection (1) shall be developed and implemented by the employer in consultation with the committee or health and safety representative, if any, for the workplace.

**Review**

42(3) An employer shall review, in consultation with the committee or health and safety representative, if any, for the workplace, the training and instruction provided to a worker and the worker’s familiarity therewith at least annually.

42(4) The review described in subsection (3) shall be held more frequently than annually, if,

   (a) The employer, on the advice of the committee or health and safety representative, if any, for the workplace, determines that such reviews are necessary; or
   
   (b) There is a change in circumstances that may affect the health or safety of a worker.

**Quality of Training for Committee Members**

Training provided to JWSHSC co-chairs and representatives must be of high quality to be effective. This training should be focused on building the capacity of committee members, both in terms of increasing their knowledge of OHS issues and in terms of developing their
capacity to participate on the committee. Given that two days of training are to be provided per year, the first two years should be directed towards basic training, with subsequent training focused on building skills. To that effect we recommend:

a. A certified base training in OHS issues and JWSHC literacy. This training must include information on the right to refuse, the right to know, the right to participate, and information around discrimination and retaliation.

b. An understanding that committee members who have attained their base training should have access to training that builds upon that base by providing ongoing education and training.

c. Each committee member should be given discretion to attend the training of their choice to further their education. Training could be provided by unions, safety associations, non-profit organizations along with seminars and conferences.

Recognition of Union Constitutions and Collective Bargaining Agreements

Alberta’s OHS Act mentions union constitutions, but does not mention Collective Bargaining Agreements. For work sites represented by national or international unions, these constitutions may be of little value to OHS considerations in Alberta. Collective Bargaining Agreements often include OHS items and are unique to employers and their bargaining agent. Accordingly, the regulations should recognize CBAs in addition to union constitutions.

JWSHCs Across Geographically Spread out Work Sites

To address the specific health and safety concerns of individual work sites, OHS regulation needs to consider provisions mandating when multiple committees are needed. A single employer might have a number of work sites across the province, ostensibly performing identical work, but with different OHS problems and differing levels of access to OHS training or information.

Attendance of Guests at Meetings

To ensure balance at committee meetings, including the inclusion of guests, any committee member should be able to request the attendance of guests at the committee meetings. For unionized workplaces, this should include the inclusion of representatives or guests from the union.