

The *Workers Compensation Act* requires that the employer must post a copy of this report in a conspicuous place at or near the workplace inspected for at least seven days, or until compliance has been achieved, whichever is the longer period. A copy of this report must also be given to the joint committee or worker health and safety representative, as applicable.

Inspection Report #201616696023A

| Employer Name | Jobsite Inspected | Scope of Inspection |
|---|----------------------------------|---------------------------------------|
| PROVINCIAL GOVERNMENT (WORKERS' COMP CO-ORDINATOR) | 46085 Yale Road Chilliwack BC | Chilliwack Law Court Sheriff Services |

| Date of Initiating Inspection | Date of This Inspection | Delivery Date of This Report | Delivery Method |
|-------------------------------|-------------------------|------------------------------|-----------------|
| Mar 18, 2016 | Mar 18, 2016 | Mar 21, 2016 | In Person |

THERE ARE TWO (2) ORDERS OR OTHER ITEMS OUTSTANDING

ACTION REQUIRED

Summary of Orders or other Items

See "Orders/Items - Full Details" section of this Inspection Report for orders/items cited

| | | |
|--|----------------------------|----------------------------|
| Order/Item No.1 <input type="checkbox"/> | Status: Outstanding | Cited: OHS4.29(b) |
| Order/Item No.2 <input type="checkbox"/> | Status: Outstanding | Cited: WCA115(2)(e) |

ORDER STATUS LEGEND

| Order Status | Description |
|--------------|---|
| Outstanding | Order Outstanding - Action Required to Achieve Compliance |
| Complied | Compliance Achieved - No Further Action Required |
| Closed | Order is Closed |
| Rescinded | Order has been cancelled - No Further Action Required |

INSPECTION NOTES

At 11:55 am Friday March 18, 2016, I received an action request regarding refusal of unsafe work. I called the worker and their supervisor immediately to arrange a meeting with the worker, a union representative and a Joint Occupational Health and Safety (JOHS) committee representative to address this right to refuse unsafe work complaint by the worker. A meeting was held at the Chilliwack Court Sheriff services office at 3:00 p.m. In attendance was the worker (a sheriff), Occupational Safety Officer Gordon Thorp, the worker's supervisor, the union shop steward who is also a JOHS committee member and the employer's occupational Safety Specialist who communicated by speaker phone.

Prior to discussing the details of the worker's Occupational Health and Safety Regulation section 3.12 Right to Refuse Unsafe Work complaint, we discussed the applicable Regulations and definitions with all parties present:

OHSR 3.12(1)

(1) A person must not carry out or cause to be carried out any work process or operate or cause to be operated any tool, appliance or equipment if that person has reasonable cause to believe that to do so would create an undue hazard to the health and safety of any person.

OHSR 3.13

(1) A worker must not be subject to discriminatory action as defined in section 150 of Part 3 of the Workers Compensation Act because the worker has acted in compliance with section 3.12 or with an order made by an officer.

(2) Temporary assignment to alternative work at no loss in pay to the worker until the matter in section 3.12 is resolved is deemed not to constitute discriminatory action.

"Undue hazard"

A "hazard" is identified in Part 1 of the Regulation as "a thing or condition that may expose a person to a risk of injury or occupational disease." Further, "undue" is defined by the Oxford dictionary as "unwarranted, inappropriate, excessive or disproportionate." Therefore, a thing or condition that may expose a worker to an excessive or unwarranted risk of injury or occupational disease represents an undue hazard for the purposes of section 3.12 of the Regulation.

"Reasonable cause to believe"

The use of the term "reasonable" in "reasonable cause to believe" means that the worker must assess the situation as a reasonable person, taking into account relevant and available information and exercising good faith judgment with respect to the hazard with due regard to the worker's training and experience.

Right to Refuse Unsafe Work issue:

The worker described an incident that occurred on Tuesday March 15, 2016 at approximately 8:30 a.m. The worker was tasked with picking up two adult males from The Agassiz RCMP and the Chilliwack RCMP and delivering them to the Chilliwack court house. The worker reports that they experienced difficulties powering up their vehicle radio which is a Sonim XP5700. Once the radio started working, the worker made five attempts to contact dispatch (SPOC) but was unsuccessful. The worker also wears an identical personal XP5700 but this unit is not programmed to communicate with dispatch. The worker states they reported to dispatch with their personal cell phone to communicate their location and personal status during this work assignment. The worker stated that use of personal cell phones for work related communication is not sanctioned by their employer. The worker stated that incomplete communication in the field could result in critical prisoner violence risk information not being communicated, emergency call for assistance not going through and inability to communicate vital information regarding the status of the worker's well being and their location. The worker stated they felt that the intermittent performance of their primary communication system puts them at risk of serious personal injury. The worker stated that the new radio units and system was not fully field tested and they had received only rudimentary instruction on how to operate the new units prior to using them in the field.

The worker made a formal complaint to their supervisor regarding this incident. Following some discussions, the matter was

unresolved. The employer conducted a formal investigation into the incident and involved both the union and the JOHS Committee to resolve the worker's complaint. The employer was unable to resolve the complaint with the new communication system to the satisfaction of the worker and assigned the worker temporary duties that do not include prisoner handling or transport.

Background

The following information was provided by the worker's supervisor and others attending the meeting:

The Sheriff's service employs approximately 450 workers province wide who rely on radio communication to send and receive critical information regarding their location, personal status and prisoner profiles. Approximately 5 weeks ago, the employer initiated a change of radio service provider and equipment. This was necessary as the previous service provider gave the employer notice that the system would be discontinued effective April 01, 2016. To date, approximately 150 workers are using the new radio equipment and service provider for day to day communication. Since implementation, there have been numerous communication difficulties reported to the employer in regards to intermittent communications using the new service and equipment from workers based in Chilliwack as well as Kelowna. From the Chilliwack office, there are two documented incidents of incomplete communication while workers were in the field and a third incident was described involving two workers delivering documentation to a private residence and experiencing incomplete communication with the new system and equipment. According to the employer representative, full implementation of this system will be completed by April 01, 2016 when the previous system will no longer be available.

Conclusion:

The worker has a legitimate concern (reasonable cause to believe) that the intermittent performance of the new communication service provided by the employer puts her personal safety at risk and creates an undue hazard to the worker in the course of her daily work assignments. It was noted that these conclusions were unanimously supported by all parties present at the meeting.

Order's #1 and #2 address this worker's Right to Refuse Unsafe Work under Regulation 3.12 of the occupational Health and Safety Regulation of British Columbia.

ORDERS/ITEMS

An employer who fails to comply with Part 3 of the *Workers Compensation Act*, the *Occupational Health & Safety Regulation*, or WorkSafeBC orders may be subject to monetary or other sanctions as prescribed by the *Workers Compensation Act*.

Orders/Items - Full DetailsOrder/Item No.1 ☐Status: **Outstanding**Cited: **OHS4.29(b)**

The employer has identified a risk of injury to workers from violence arising out of their employment. Elimination of the risk is not possible. This worker who exercised their right to refuse unsafe work, relies on effective radio communication to send and receive critical information related to this worker's location, status and prisoner profiles during prisoner handling and transport. The radio system this employer is currently utilizing is reported to provide intermittent two way communication between this worker, their supervisor and central dispatch. This intermittent communication service puts this worker's health and safety at risk when handling and transporting potentially dangerous prisoners, specific to violence in the workplace.

The employer has not established policies, procedures or work environment changes to minimize the risk to it's workers arising from ineffective communication tools in the workplace.

This is in contravention of the Occupational Health and Safety Regulation Section 4.29(b).

If a risk of injury to workers from violence is identified by an assessment performed under section 4.28 the employer must, if elimination of the risk to workers is not possible, establish procedures, policies and work environment arrangements to minimize the risk to workers.

Order/Item No.2 ☐Status: **Outstanding**Cited: **WCA115(2)(e)**

This worker stated that they were given only rudimentary instruction regarding how to use the new communication radios provided by their employer. This instruction covered basic use such as unit power on - off, how to key the microphone etc. information and was delivered verbally. The employer did not provide information on how to deal with transmission and receiving difficulties or alternate methods to communicate if the system failed or the radios malfunctioned. The worker stated that they were not provided with written procedures or protocols regarding the new radio equipment or system. This exposes the worker to the hazard of violence which could result in serious injury or death.

This is in contravention of the Workers Compensation Act Section 115 (2)(e).

An employer must provide to the employer's workers the information, instruction, training and supervision necessary to ensure the health and safety of those workers in carrying out their work and to ensure the health and safety of other workers at the workplace.

REFERENCES

In addition to any orders, or other items, and the information provided in the Inspection Notes section in this Inspection Report, the officer may discuss other health and safety issues with the employer arising out of the inspection. The information below sets out the health and safety requirements discussed with the employer, and unless otherwise noted, violations of these requirements were not observed.

| Reference | Details Discussed |
|---|--|
| OHS3.12(3)(a) A supervisor or employer receiving a report made under subsection (2) must immediately investigate the matter and (a) ensure that any unsafe condition is remedied without delay, or (b) if in his or her opinion the report is not valid, must so inform the person who made the report. | Discussed the requirements of this Regulation with the employer representative. |
| OHS3.12(3)(b) A supervisor or employer receiving a report made under subsection (2) must immediately investigate the matter and (a) ensure that any unsafe condition is remedied without delay, or (b) if in his or her opinion the report is not valid, must so inform the person who made the report. | Discussed the requirements of this Regulation with the employer representative. |
| OHS3.12(1) A person must not carry out or cause to be carried out any work process or operate or cause to be operated any tool, appliance or equipment if that person has reasonable cause to believe that to do so would create an undue hazard to the health and safety of any person. | Discussed the intent of this Regulation with the employer representative. Focus of discussions was an explanation of what constitutes "reasonable cause to believe" and "undue hazard" |

| Employer # | Mailing Address | Classification Unit # | Operating Location |
|------------|--|-----------------------|--------------------|
| 4000 | WORKERS' COMPENSATION PROGRAMS BC PUBLIC SERVICE AGENCY PO BOX 9404 STN PROV GOVT VICTORIA BC V8W 9V1 | 841102 | 314 |

| Lab Samples Taken | Direct Readings | Results Presented | Sampling Inspection(s) | Workers onsite during inspection | Notice of Project Number |
|-------------------|-----------------|-------------------|------------------------|----------------------------------|--------------------------|
| N | N | N | | 25 | |

| Inspection Report Delivered To | Employer Representative Present During Inspection | Worker Representative Present During Inspection | Labour Organization & Local |
|--------------------------------|---|---|-----------------------------|
| Ross McKenna | Kevin Schmidt | Brittany Salant | BCGEU |

| WorkSafeBC Officer Conducting Inspection |
|--|
| David Pringle |

| *Inspection Time | *Travel Time |
|------------------|--------------|
| 3.00 hrs | 2.00 hrs |

*The time recorded above reflects the inspection time and travel time associated with this inspection report and includes time spent on pre and post-inspection activities. Additional time may be added for subsequent activity.

Right to Review

Any employer, worker, owner, supplier, union, or a member of a deceased worker's family directly affected may, within 45 calendar days of the delivery date of this report, in writing, request the Review Division of WorkSafeBC to conduct a review of an order, or the non-issuance of an order, by contacting the Review Division. Employers requiring assistance may contact the Employers' Advisers at 1-800-925-2233.

WorkSafeBC values your feedback. To obtain that feedback, an external market research provider may be contacting you to complete a survey.