



OCCUPATIONAL HEALTH
AND SAFETY ACT



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CHAPTER O-0.2

OCCUPATIONAL HEALTH AND SAFETY ACT

Assented to August 5, 1983

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contractor – entrepreneur	
discriminatory action – mesure discriminatoire	
employee – salarié	
employer – employeur	
health and safety representative – délégué à l’hygiène et à la sécurité	
medical examination – examen médical	
mine – mine	
Minister – Ministre	
occupational disease – maladie professionnelle	
officer – agent	
owner – propriétaire	
place of employment – lieu de travail	
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CHAPTER O-0.2
Occupational Health and Safety Act
Assented to August 5, 1983

Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

1 In this Act	definitions
“Appeals Tribunal” means the Appeals Tribunal established under the <i>Workplace Health, Safety and Compensation Commission Act</i> ;	Appeals Tribunal
“Chief Compliance Officer” means the Chief Compliance Officer designated under section 5;	Chief Compliance Officer
“Commission” means the Workplace Health, Safety and Compensation Commission established under the <i>Workplace Health, Safety and Compensation Commission Act</i> ;	the legal entity
“committee” means a joint health and safety committee established in accordance with this Act;	JHSC
“construction” includes building, erection, alteration, repair, dismantling, demolition, structural maintenance, painting, moving, land clearing, earth moving, grading, excavating, street and highway building, concreting, equipment installation and alteration and the structural installation of construction components and materials in any form or for any purpose, and any work in connection therewith;	construction
“contracting employer” means a person who through a contract,	contracting employer

agreement or ownership, directs the activities of one or more employers as defined in paragraph (a) of the definition “employer”;

contractor

“contractor” means

(a) a person who by contract undertakes all the work at a project site,

(b) an owner who undertakes all or part of the work at a project site, or

(c) an owner who by contract engages more than one person to undertake all or part of the work at a project site;

discriminatory
action

“discriminatory action” means any action by an employer or union that adversely affects an employee with respect to any terms or conditions of employment, opportunity for promotion or membership in a union, and includes the action of dismissal, layoff, suspension, demotion, transfer of job location, reduction in wages, change in hours of work or reprimand;

employee

“employee” means

(a) a person employed at or in a place of employment, or

(b) a person at or in a place of employment for any purpose in connection therewith;

employer

“employer” means

(a) a person who employs one or more employees,

(b) a manager, superintendent, supervisor, overseer or any person having authority over an employee, or

(c) an agent of any person referred to in paragraph (a) or (b);

“health and safety representative” means a health and safety representative elected under section 17 or designated under section 17.1;

health and safety representative

“medical examination” means a medical examination satisfactory to the Commission;

medical examination

“mine” means any work or undertaking for the purpose of opening up, proving, removing or extracting any metallic or non-metallic mineral or mineral bearing substance, rock, earth, clay, sand or gravel;

mine

“Minister” means the Minister of Post-Secondary Education, Training and Labour;

Minister

“occupational disease” means any disease or illness or departure from normal health arising out of employment, and includes an industrial disease as defined by the *Workers’ Compensation Act*;

occupational disease

“officer” means an occupational health and safety officer appointed under section 5;

officer

“owner” includes a trustee, receiver, mortgagee in possession or a tenant or a person for whose direct benefit on completion work is being done, but does not include a landlord who, under the terms of the lease, has transferred all responsibility for risks in relation to a place of employment;

owner

“peace officer” Repealed: 1990, c.22, s.36.

place of employment

“place of employment” means any building, structure, premises, water or land where work is carried on by one or more employees, and includes a project site, a mine, a ferry, a train and any vehicle used or likely to be used by an employee;

project site

“project site” means any building, structure, premises, water or land where construction is carried on;

protective equipment

“protective equipment” means any piece of equipment or clothing designed to be used to protect the health or safety of an employee;

sub-contractor

“sub-contractor” means a person who by contract undertakes part of the work at a project site;

supplier

“supplier” means any person who manufactures, supplies, sells, leases, distributes or installs any tool, equipment, machine, device or any biological, chemical or physical agent to be used by an employee;

union

“union” means

(a) a trade union as defined under the *Industrial Relations Act*,

(b) any organization other than a trade union referred to in paragraph (a) representing employees to whom this Act applies formed for purposes that include the regulation of relations between employers and employees that has a written constitution, rules or by-laws setting forth its objects and purposes and defining the conditions under which

persons may be admitted as members thereof and continued in such membership.

1989, c.28, s.1; 1990, c.22, s.36; 1994, c.70, s.5; 1998, c.41, s.92; 2000, c.26, s.232; 2001, c.35, s.1; 2006, c.16, s.127; 2007, c.10, s.71; 2007, c.12, s.1.

1.1 Unless the context requires otherwise, a reference in any other Act of the Legislature, in regulations under any other Act of the Legislature or in any other document or instrument to the Occupational Health and Safety Commission or to the members of the Occupational Health and Safety Commission shall, as it relates to the administration of the former Occupational Health and Safety Commission Act or the within Act, be read as a reference to the Workplace Health, Safety and Compensation Commission or the board of directors of the Workplace Health, Safety and Compensation Commission.

Reference to former Commission

1994, c.70, s.5.

APPLICATION

2(1) This Act binds the Crown.

Crown is bound

2(2) Subject to section 3, this Act applies to and shall be observed at every place of employment subject to the legislative jurisdiction of the Province.

Applies to place of employment

3(1) This Act does not apply to a place of employment that is a private home unless the work that is carried on has been contracted to the employer of one or more persons employed at that private home.

May not apply to private homes

Exception by regulation

3(2) This Act does not apply to any place of employment exempted by regulation from the application of the Act.

Process to get a deviation

3(3) Where an employer applies, in writing, for an authorization to deviate from any provision of the regulations, the Chief Compliance Officer may give permission in writing for that deviation under such terms and conditions as he shall consider advisable

(a) in accordance with the standards, if any, prescribed by regulation for granting such deviations, or

(b) where no standards for granting deviations are prescribed by regulation, if he is satisfied that the deviation affords protection for the health and safety of employees equal to or greater than the protection prescribed by regulation.

1985, c.64, s.1.

ADMINISTRATION

4(1) Repealed: 1994, c.70, s.5.

Intergovernmental agreements

4(2) The Minister may, with the approval of the Lieutenant-Governor in Council, enter into such agreements with the Government of Canada, with other provinces or with municipalities or rural communities, as he considers necessary or expedient for the administration of this Act.

4(3) Repealed: 1994, c.70, s.5.

1991, c.63, s.7; 1994, c.70, s.5; 2005, c.7, s.55.

<p>5(1) The Lieutenant-Governor in Council may appoint occupational health and safety officers for the purpose of carrying out the provisions of this Act and the regulations and designate one of the officers as the Chief Compliance Officer.</p>	<p>Officials</p>
<p>5(2) The Commission shall issue to each officer an identification card signed by the President and Chief Executive Officer of the Commission.</p>	<p>Officer identification</p>
<p>5(3) The Commission may designate officers who may be appointed by the government of another province or the Government of Canada to carry out health and safety inspections or other work on behalf of that government.</p>	<p>Designation authority</p>
<p>1991, c.63, s.7; 1994, c.70, s.5.</p>	
<p>5.1 The Chief Compliance Officer may delegate any or all of his powers, duties, authority or discretion to another occupational health and safety officer, in such manner and subject to such terms and conditions as the Chief Compliance Officer considers appropriate.</p>	<p>Chief Compliance Officer may delegate powers</p>
<p>2004, c.25, s.1.</p>	
<p>6 The Commission may designate persons as technical experts to accompany an officer into any place of employment.</p>	<p>Technical experts</p>
<p>7(1) The Lieutenant-Governor in Council may, at the request of the Commission, cause an inquiry to be held under the <i>Inquiries Act</i> into any matter concerning occupational health and safety.</p>	<p>Authority for inquiry</p>

Findings 7(2) Notwithstanding the *Inquiries Act*, commissioners holding an inquiry initiated under this section shall record and report the evidence taken before them and the finding thereon and their proceedings to the Commission to be by it laid before the Lieutenant-Governor in Council.

**DUTIES OF EMPLOYERS,
OWNERS, CONTRACTORS,
SUB-CONTRACTORS,
EMPLOYEES AND SUPPLIERS**

Requirement for safety policy 8(1) Every employer with twenty or more employees regularly employed at a place of employment shall establish and file with the Commission a safety policy in respect of that place of employment.

Policy shall be kept at place of employment 8(2) An employer who files a safety policy under subsection (1) shall keep a copy of the policy at the place of employment and make it available to an officer on request.

2001, c.35, s.2.

Duties of employer 9(1) Every employer shall

Precautions (a) take every reasonable precaution to ensure the health and safety of his employees;

Compliance (b) comply with this Act, the regulations and any order made in accordance with this Act or the regulations; and

Ensure employees comply (c) ensure that his employees comply with this Act, the regulations and any order made in accordance with this Act or the regulations.

9(2) Without limiting the generality of the duties under subsection (1), every employer shall

(a) ensure that the necessary systems of work, tools, equipment, machines, devices and materials are maintained in good condition and are of minimum risk to health and safety when used as directed by the supplier or in accordance with the directions supplied by the supplier;

Ensure equipment is maintained

(a.1) ensure that the place of employment is inspected at least once a month to identify any risks to the health and safety of his employees;

Ensure monthly inspection

(b) acquaint an employee with any hazard in connection with the use, handling, storage, disposal and transport of any tool, equipment, machine, device or biological, chemical or physical agent;

Advise of hazard

(c) provide such information, instruction, training and supervision as are necessary to ensure an employee's health and safety;

Provide training, supervision

(d) provide and maintain in good condition such protective equipment as is required by regulation and ensure that such equipment is used by an employee in the course of work;

Provide protective equipment

(e) co-operate with a committee, where such a committee has been established, a health and safety representative, where such a representative has been elected or designated, and with any person responsible for the enforcement of this Act and the regulations.

Co-operate with JHSC or safety representative

Program developed with JHSC **9(3)** An employer shall develop a program for the inspection referred to in paragraph (2)(a.1) with the joint health and safety committee, if any, or the health and safety representative, if any, and shall share the results of each inspection with the committee or the health and safety representative.

2001, c.35, s.3; 2007, c.12, s.2.

Duties of contractor **10** Every contractor and sub-contractor shall

Compliance *(a)* comply with this Act, the regulations and any order made in accordance with this Act or the regulations; and

Take precautions *(b)* for every project site for which he is responsible take every reasonable precaution to ensure the health and safety of any person having access to such project site.

10.1(1) In this section

Employer in this section “employer” means an employer as defined in paragraph (a) of the definition “employer”.

Duties of contracting employer **10.1(2)** A contracting employer who directs the activities of one or more employers involved in work at a place of employment shall ensure, as far as is reasonably practicable to so do, that each employer complies with this Act and the regulations in respect of that place of employment.

Compliance **10.1(3)** Every contracting employer shall comply with this Act, the regulations and any order made in accordance with this Act or the regulations.

10.1(4) Notwithstanding subsection 3(1), this section does not apply to a place of employment that is a private home. No application to private home

2001, c.35, s.4; 2004, c.4, s.1.

11 Every owner of a place of employment or part thereof shall Duties of owner

(a) comply with this Act, the regulations and any order made in accordance with this Act or the regulations; and Compliance

(b) take every reasonable precaution to ensure the health and safety of any person having access to or using that place of employment or part thereof. Take precautions

2001, c.35, s.5.

12 Every employee shall Duties of employee

(a) comply with this Act, the regulations and any order made in accordance with this Act or the regulations; Compliance

(b) conduct himself to ensure his own health and safety and that of other persons at, in or near his place of employment; Ensure safe conduct

(c) report to the employer the existence of any hazard of which he is aware; Report hazards

(d) wear or use such protective equipment as is required by regulation; Wear protective equipment

(e) consult and co-operate with the committee where one has been established or with the health and safety representative where one has been elected or designated; and Co-operate with JHSC or representatives

(f) co-operate with any person responsible for the enforcement of this Act and the regulations.

2001, c.35, s.6; 2007, c.12, s.3.

Duties of supplier

13 Every supplier shall

(a) take every reasonable precaution to ensure that any tool, equipment, machine or device or any biological, chemical or physical agent supplied by him

Ensure safe equipment

(i) is reasonably safe when used as directed by the supplier or in accordance with the directions supplied by the supplier, and

Compliance

(ii) complies with this Act and regulations;

Provide directions

(b) provide directions respecting the safe use of any tool, equipment, machine or device or any biological, chemical or physical agent obtained by an employer to be used at a place of employment by employees; and

Ensure labelling

(c) ensure that any biological, chemical or physical agent supplied by him is labelled in accordance with the applicable federal and provincial regulations.

JOINT HEALTH AND SAFETY COMMITTEES

Application

14(0.1) This section does not apply to a project site.

-
- 14(1)** Every employer with twenty or more employees regularly employed at a place of employment shall ensure the establishment of a joint health and safety committee. Requirements
- 14(1.1)** Repealed: 2007, c.12, s.4.
- 14(2)** A committee shall consist of such number of persons as may be agreed to by the employer and the employees. Size
- 14(3)** A committee shall consist of equal representation from both the employer and the employees, and the employer shall designate his representative or representatives and the employees shall designate their representative or representatives. Representation
- 14(4)** Where the employer and employees cannot agree on the size of the committee, the Chief Compliance Officer may establish its size. Establish size
- 14(5)** The employer and employee members of a committee shall elect a co-chairman from their respective groups. Co-chairs each side
- 14(6)** Subject to section 16, a committee shall meet at least once a month. Meet once a month
- 14(7)** Repealed: 2007, c.12, s.4.
- 14(8)** A committee shall take and maintain minutes of its meeting on a form approved by the Commission. Minutes
- 14(9)** The employer at a place of employment shall ensure that the names of the members of the committee of the place of employment and the minutes of the most recent committee meeting are posted in a prominent place or places at the place of employment. Post names and minutes

	<p>14(10) A copy of the minutes signed by the co-chairmen of the committee shall be sent to the Commission.</p> <p>14(11) Repealed: 2007, c.12, s.4.</p> <p>14(12) Repealed: 2007, c.12, s.4.</p>
Resolution	<p>14(13) Where a committee cannot agree on a matter related to health and safety, the committee shall call an officer to resolve the problem.</p> <p>1985, c.64, s.2; 2001, c.35, s.7; 2007, c.12, s.4.</p>
Application	<p>14.1(1) This section does not apply to a project site.</p>
JHSC training	<p>14.1(2) An employer shall ensure that each person who is designated to serve on a joint health and safety committee</p> <p style="padding-left: 40px;"><i>(a)</i> has attended an educational program as prescribed by the regulations, or</p> <p style="padding-left: 40px;"><i>(b)</i> attends an educational program prescribed by the regulations within twelve months after being designated, if the person has not attended such program.</p>
Exemption	<p>14.1(3) Subsection (2) does not apply to a person who, immediately before the commencement of this section, was a member of the committee at a place of employment, but only for so long as that person continues to be a member of the committee at that place of employment.</p>

14.1(4) A person referred to in subsection (3) may attend an educational program prescribed by the regulations if the committee of which the person is a member recommends to the employer that the person attend, and the employer grants leave to the person.

Member may request training

14.1(5) Where an employer does not grant leave in accordance with subsection (4), the Commission may order the employer to grant the person leave to attend the educational program.

Commission to resolve disputes

14.1(6) Each member of the committee shall, for the periods during which the member is taking any educational program required under this Act that relates to the member's service on the committee or during which the member is attending any committee meetings, receive pay at his or her rate and other benefits to which he or she would otherwise be entitled.

Employer to pay during training

2007, c.12, s.5.

14.2(1) This section applies to a joint health and safety committee that is established for a project site.

Application

14.2(2) The employer and employee representatives of a committee shall each elect a co-chairman from their respective groups.

Co-chairs each side

14.2(3) A committee, unless it is dissolved under subsection 14.3(6), continues until work on the project site is completed, regardless of the number of employees working on the site.

Continuation of committee

14.2(4) A committee shall meet at least once a month.

Meet once a month

Minutes

14.2(5) A committee shall

(a) take and maintain minutes of its meeting on a form approved by the Commission,

(b) promptly provide the contractor with a copy of the minutes signed by the co-chairmen of the committee, and

(c) send a copy of the minutes signed by the co-chairmen of the committee to the Commission.

Resolution

14.2(6) Where a committee cannot agree on a matter related to health and safety, the committee shall call an officer to resolve the problem.

Committee rights on project site

14.2(7) Section 15 applies with the necessary modifications to a committee and the contractor on a project site, except as follows:

(a) the reference to “employer” in paragraph (d) shall be read as “employers on the site”;

(b) the reference to “employer” in paragraph (g) shall be read as “employers”;

(c) subparagraph (k)(ii) shall be read as follows:

(ii) may be assigned to a committee by agreement between the committee and the contractor, or

14.2(8) A contractor who is responsible for a project site for which a committee is established shall ensure that

Contractor responsibility

(a) the names of the members of the committee are posted in a prominent place or places at the project site, and

(b) the minutes of the most recent committee meeting are promptly posted in a prominent place or places at the project site.

2007, c.12, s.5.

14.3(1) This section applies to a project site where

Application

(a) work on the site has continued for more than ninety days, and

(b) thirty or more employees but fewer than five hundred employees work at the site.

14.3(2) A contractor who is responsible for a project site shall ensure that a joint health and safety committee is established within two weeks after the criteria set out in subsection (1) have been met.

Contractor to establish

14.3(3) A contractor shall ensure that a committee

Committee membership

(a) is constituted of both employer and employee representatives, of which not less than half of the representatives are designated by employees in accordance with this section,

(b) has at least two employee representatives designated by employees in accordance with this section, and



(c) has at least one person designated by the contractor as the representative of the contractor.

Members may be designated

14.3(4) Where an employer has six or more employees working at a project site,

(a) the employer may designate a person to serve on the committee as an employer representative, and

(b) the employees shall designate a person to serve on the committee as an employee representative.

Designating another employee

14.3(5) Nothing in subsection (4) prevents employees who work for one employer from designating an employee who works for another employer to serve on the committee as an employee representative.

JHSC requirement if project expands

14.3(6) If the number of employees working at the site at any time exceeds four hundred and ninety-nine, the committee established under this section is dissolved, and the contractor shall establish a committee in accordance with section 14.4.

All records carried forward

14.3(7) The documents, minutes, records and any other material of the committee that is dissolved become the documents, minutes, records and material of the committee that is subsequently established.

2007, c.12, s.5.

Definition of 'trade'

14.4(1) In this section, "trade" means a trade prescribed by regulation and includes any trade designated by a committee under subsection (8).

<p>14.4(2) This section applies to a project site that has five hundred or more employees working on the site at any time.</p>	<p>Application</p>
<p>14.4(3) A contractor who is responsible for a project site shall ensure that a joint health and safety committee is established within two weeks after the criterion set out in subsection (2) has been met.</p>	<p>Contractor to establish</p>
<p>14.4(4) A contractor shall ensure that a committee</p>	<p>Committee membership</p>
<p><i>(a)</i> is constituted of both employer and employee representatives, of which not less than half of the representatives are designated by employees in accordance with this section,</p>	
<p><i>(b)</i> has at least two employee representatives designated by employees in accordance with this section, and</p>	
<p><i>(c)</i> has at least one person designated by the contractor as the representative of the contractor.</p>	
<p>14.4(5) Where there are one or more employers engaged in work on a project site and the employees of those employers are working in the same trade at the site, the employees working in that trade shall designate a person to serve on the committee as an employee representative.</p>	<p>One member per trade</p>
<p>14.4(6) Nothing in subsection (5) prevents employees who work in one trade from designating a person who works in another trade to serve on the committee as an employee representative.</p>	<p>Designating another employee</p>

Designating another employer

14.4(7) Nothing in this section prevents employers who provide services in one trade from designating a person who is an employer who provides services in another trade to serve on the committee as an employer representative.

New trade designation

14.4(8) Where a committee is of the opinion that it is desirable to have a representative from a trade that has not been prescribed by regulation, the committee may designate the trade for the purposes of the definition “trade” in subsection (1) and shall promptly advise the contractor that the trade has been designated, and the contractor shall ensure that the employers and employees in that trade are advised of the designation.

Application to new trade

14.4(9) Subsections (4) to (7), inclusive, apply in respect of a trade designated under subsection (8).

2007, c.12, s.5.

Application

14.5(1) This section applies to a project site.

Co-chair training

14.5(2) On and after the date that is one year after the commencement of this section, no person may be elected to be a co-chairman of a joint health and safety committee unless the person has attended an educational program prescribed by the regulations.

Member training

14.5(3) On and after the date that is two years after the commencement of this section, no person may be designated to serve on a committee unless the person has attended an educational program prescribed by the regulations.

<p>14.5(4) Subsections (2) and (3) do not apply if the person designated to serve on a committee was a member of a committee or a health and safety representative on a project site at any time within the twelve months previous to the commencement of this section.</p>	<p>Exemption</p>
<p>14.5(5) A person referred to in subsection (4) may attend an educational program prescribed by the regulations if the committee of which the person is a member recommends to the employer that the person attend, and the employer grants leave to the person.</p>	<p>Member may request training</p>
<p>14.5(6) Where an employer does not grant leave under subsection (5), the Commission may order the employer to grant the person leave to attend the educational program.</p>	<p>Commission to resolve dispute</p>
<p>14.5(7) Each member of a committee shall, for the periods during which the member is taking any educational program required under this Act that relates to the member's service on the committee or during which the member is attending any committee meetings, receive pay at his or her rate and other benefits to which he or she would otherwise be entitled.</p>	<p>Employer to pay during training</p>
<p>2007, c.12, s.5.</p>	
<p>15 A committee may</p>	<p>Committee rights</p>
<p>(a) make recommendations for the establishment and enforcement of policies involving health and safety practices;</p>	<p>Recommend policies</p>
<p>(b) participate in the identification and control of health and safety hazards at the place of employment;</p>	<p>Identify hazards</p>

Warn of hazards	<i>(c)</i> inform employees and the employer of existing or potential hazards at the place of employment and of the nature of the risks to their health and safety;
Promote programs	<i>(d)</i> establish and promote health and safety programs for the education and information of the employer and employees;
Receive complaints	<i>(e)</i> receive, consider and make recommendations to the employer regarding complaints respecting the health and safety of the employees at the place of employment;
Record and track complaints	<i>(f)</i> maintain records respecting the receipt of, the consideration of and recommendations respecting complaints;
Obtain information	<i>(g)</i> obtain information from the employer respecting the identification of existing or potential hazards of conditions, tools, equipment, devices and machines at the place of employment;
Monitor and measure	<i>(h)</i> carry out monitoring and measuring procedures by trained committee members where the Commission has determined there is a need for regular monitoring and measuring at the place of employment and has directed the committee to carry out such monitoring and measuring;
Investigate complaints	<i>(i)</i> investigate any matter referred to in paragraph (e);
Inspections and investigations	<i>(j)</i> participate in all inspections, inquiries and investigations concerning the health and safety of employees, and

in particular the investigation of any matter referred to in section 43;

(k) perform any other duties that Other duties

(i) the Commission may assign to a committee,

(ii) may be assigned to a committee by agreement between the employer and the employees, or

(iii) are prescribed by this Act or the regulations.

16(1) Where the nature of employment at a place of employment presents a low risk to the health or safety of employees at the place of employment, the Commission may, upon receipt of an application from the committee and after such consultation with any interested persons as it considers advisable, reduce the frequency of committee meetings, if the standard of health and safety of the employees is not thereby materially affected. Reduce frequency of meetings

16(2) Where meetings as scheduled by a committee could cause a disruption to the normal operations at a place of employment, the Commission may, upon receipt of an application from the employer and in consultation with the committee, schedule the time for the meetings of the committee. Rescheduling

HEALTH AND SAFETY REPRESENTATIVES

17(0.1) This section does not apply to a project site. Application

Obligation

17(1) Subject to subsection (2), every employer with not fewer than five and not more than nineteen employees regularly employed at a place of employment shall establish a safety policy in respect of that place of employment which may include provision for a health and safety representative.

High-risk workplace

17(2) Where the nature of employment at a place of employment presents a high risk to the health and safety of employees or where the accident record of a place of employment is higher than is normal for that place of employment or for similar places of employment, the Commission may require an employer to establish and file with the Commission a safety policy that includes provision for a health and safety representative.

Election

17(3) Where a safety policy established under subsection (1) or (2) includes provision for a health and safety representative, the employees shall elect a health and safety representative.

Post name

17(4) The employer shall post the name of the elected health and safety representative in a prominent place or places at the place of employment.

2007, c.12, s.6.

Application

17.1(1) This section applies to a project site

(a) with more than five but fewer than thirty employees working on the site, regardless of the length of time work is carried out on the site, or

(b) where work carried out on the site has not exceeded ninety days, and thirty or more but fewer than five hundred employees work on the site.

Training and exemption

17.1(2) On and after the date that is one year after the commencement of this section, no person may be designated as a health and safety representative unless the person

(a) has attended an educational program prescribed by the regulations, or

(b) has served as a health and safety representative or as a member of a joint health and safety committee on a project site within the twelve months preceding the commencement of this section.

Joint designation

17.1(3) Subject to subsection (4), the contractor and the employees working on a project site shall jointly designate a health and safety representative within two weeks

(a) after work on the project site has commenced,

(b) after a person designated as a health and safety representative resigns, is removed or ceases to work at the site, and

(c) after any increase in the number of employees working on the site warrants another designation.

Number of representatives

17.1(4) Subject to subsection (5), health and safety representatives shall be designated as follows:

(a) for five to fifty employees working at the site – one representative; and

(b) for every fifty employees thereafter working at the site, or any portion in excess of a multiple of fifty – one representative.

Disagreement on designation

17.1(5) Where the contractor and the employees working at the site are unable to agree on a joint designation under subsection (3), the employees shall designate a health and safety representative within one week after the applicable period set out in subsection (3), and the contractor may designate a health and safety representative within the same period, and subsequent health and safety representatives shall be designated by the employees and may be designated by the contractor in accordance with subsection (4).

Continuation

17.1(6) A person who is designated as a health and safety representative remains in the position until he resigns, is removed, no longer works at the site or a committee is established under section 14.3 or 14.4.

Duties of representative

17.1(7) Section 18 applies with the necessary modifications to health and safety representatives and a contractor on a project site.

Training for representative

17.1(8) Each health and safety representative shall, for the periods during which he or she is taking any educational program required under this Act that relates to his or her service as a health and safety representative, receive pay at his or her rate and other benefits to which he or she would otherwise be entitled.

17.1(9) A person referred to in paragraph (2)(b) may attend an educational program prescribed by the regulations if the person requests the training and the employer grants leave to the person.

Representative may request training

17.1(10) Where an employer does not grant leave under subsection (9), the Commission may order the employer to grant the person leave to attend the educational program.

Commission to resolve dispute

17.1(11) The contractor shall post the name of the health and safety representatives in a prominent place or places at the project site.

Contractor to post name(s)

2007, c.12, s.7.

18(1) A health and safety representative may do anything that a committee may do under section 15.

Representatives' responsibilities

18(2) A health and safety representative shall consult regularly with his employer in the course of his activities.

Consultation

18(3) Where the employer and a health and safety representative cannot agree on a matter related to health or safety, the health and safety representative shall call an officer to resolve the problem.

Resolving problems

RIGHT TO REFUSE

19 An employee may refuse to do any act where he has reasonable grounds for believing that the act is likely to endanger his health or safety or the health or safety of any other employee.

Grounds

2001, c.35, s.8.

Reporting	20(1) Any employee who believes that an act is likely to endanger his or any other employee's health or safety shall immediately report his concern to his supervisor, who shall promptly investigate the situation in the presence of the employee.
Concurrence and remedial action	20(2) Where a supervisor finds that the employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, he shall take appropriate remedial action or recommend appropriate remedial action to the employer.
Non-concurrence	20(3) Where a supervisor finds the employee does not have reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, he shall advise the employee to do that act.
Refer to committee	20(4) Where an employee has made a report under subsection (1) and the matter has not been resolved to his satisfaction, he shall refer the matter to a committee or, where there is no committee, to an officer.
Investigation	20(5) Upon receipt of a referral under subsection (4), the committee shall promptly investigate the situation.
Remedial action	20(6) Where a committee finds that the employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the committee shall recommend appropriate remedial action to the employer.

20(7) Where a committee finds that the employee does not have reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the committee shall advise the employee to do that act. Non-concurrence

20(8) Where a matter has been referred to a committee under subsection (4) and the matter is not resolved to the satisfaction of the employee, the employee shall refer the matter to an officer. Refer to officer

20(9) Upon receipt of a referral under subsection (4) or (8), the officer shall promptly investigate the situation and make his findings known in writing as soon as is practicable to the employer, the employee and the committee, if any, as to whether the employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health and safety of any other employee. Officer's report

20(10) Where, on a referral to an officer under subsection (4) or (8), the officer finds that an employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the officer shall order appropriate remedial action to be taken by the employer. Remedial action

20(11) Where, on a referral to an officer under subsection (4) or (8), the officer finds that an employee does not have reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the officer shall advise the employee in writing to do that act. Non-concurrence

Service requirements

20(11.1) Subsections 32(2) and (3) apply with the necessary modifications to advice given in writing by an officer under subsection (11).

Employee to remain in safe place

20(12) Pending any investigation under this section or, if an appeal is taken by an employee against the advice of an officer given under subsection (11), pending the decision of the Chief Compliance Officer, the employee shall remain available at a safe place near his or her work station during his or her normal work hours.

2001, c.35, s.9; 2004, c.4, s.2.

Employee's right protected

21(1) An employee's right under section 19 to refuse to do any act is protected,

If concern reported to supervisor

(a) if he has reported his concern to his supervisor under section 20,

(i) until remedial action recommended by the supervisor under section 20 is taken by the supervisor or employer to the employee's satisfaction, or

(ii) until the supervisor has advised the employee under section 20 to do that act;

If matter referred to committee

(b) if the employee has referred the matter to a committee under section 20,

(i) until remedial action recommended by the committee under section 20 is taken by the employer to the employee's satisfaction, or

(ii) until the committee has advised the employee under section 20 to do that act;	
(c) if the employee has referred the matter to an officer under section 20,	If matter referred to officer
(i) until remedial action ordered by the officer under section 20 is taken by the employer to the officer's satisfaction, or	
(ii) until the officer has advised the employee under section 20 to do that act, and	
(d) if the employee has appealed the advice of an officer given under subsection 20(11) to the Chief Compliance Officer, until the decision of the Chief Compliance Officer is rendered.	Employee protected and Chief Compliance Officer renders decision
21(2) Where an employee has refused to do an act pursuant to section 19, the employer shall not assign another employee to perform that act unless that other employee has been advised by the employer of such refusal and the reasons therefor and of his rights under this Act.	Inform other employees
2001, c.35, s.10; 2004, c.4, s.3.	
22(1) Subject to subsection (2), where an employee has refused to do an act pursuant to section 19 and his right to refuse is protected under section 21, his employer may reassign him temporarily to perform other acts or to other work that is reasonably equivalent to the acts or work he normally performs and the employer shall pay that employee the same wages and grant him the same benefits as he	Employee may be reassigned to equivalent work; employer must pay

would have received if he had not refused to do the act.

Reassignment must be in accordance with collective agreement, if any

22(2) Where a collective agreement is in force, any reassignment referred to in subsection (1) shall be made in accordance with the collective agreement.

Reasonable refusal (as judged by arbitrator), cannot be punished

23 Where an employee has reasonably refused to do an act pursuant to section 19, his right to refuse is protected under section 21 and he has not been reassigned to do other acts or work under section 22, the employer shall pay that employee the same wages and grant him the same benefits as he would have received if he had not refused to do the act.

DISCRIMINATORY ACTION

See also "Definitions"
Employee may not be punished for exercising rights

24(1) No employer or union shall

(a) take any discriminatory action against an employee, or

(b) threaten to take any discriminatory action against an employee or intimidate or coerce any employee, because the employee has sought the enforcement of this Act, the regulations or an order made in accordance with this Act or the regulations, or has acted in compliance with this Act, the regulations or an order made in accordance with this Act or the regulations or has sought enforcement of the *Smoke-free Places Act* or the regulations or an order made under that Act as that Act or the regulations or orders under that Act relate to a place of employment under this Act.

24(2) A reassignment under section 22 is not discriminatory action under this section.

2004, c.S-9.5, s.17.

25(1) Where an employee complains that an employer or union has violated section 24, the employee may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint in writing with the Commission.

Employee may obtain arbitration

25(1.1) A complaint referred to in subsection (1) shall be filed with the Commission not later than one year after the violation of section 24 complained of.

Complaint must be filed within one year

25(2) Where the Commission receives a complaint referred to in subsection (1) within the time limit prescribed in subsection (1.1), the Commission shall refer the complaint to an arbitrator whom the Commission shall appoint.

1985, c.64, s.3.

26(1) An arbitrator has all the powers of an arbitrator under the *Industrial Relations Act*.

Powers of arbitrator

26(2) Where an arbitrator makes a finding that the action of the employer or union was discriminatory or that an employer or union has threatened discriminatory action or intimidated or coerced an employee, the arbitrator shall make an order in writing which may include

Arbitrator makes finding

(a) an order to the employer or union to cease the discriminatory action;

(b) an order to an employer to reinstate the employee to his former employment under the same terms and conditions under which he was formerly employed;

(c) an order to the employer to pay to the employee any wages the employee lost because he was wrongfully discriminated against; or

(d) an order to the employer or union that any reprimand or other reference to the matter in the employer's or union's records on the employee's conduct be removed.

Arbitrator must give reason in writing

26(3) After investigating a complaint, an arbitrator shall give his findings in writing with reasons therefor and any order made under subsection (2) to the Commission, to the employer or union and to the employee.

Clarification may be sought within fourteen days

26(4) Where an order is made under this section and it appears to a party bound by the order that the arbitrator has failed to deal with any matter of difference, or that a term of the order requires clarification, such party may, within fourteen days after the making of the order, request the arbitrator to deal with the matter and, upon such request, the arbitrator shall deal with the matter of the request in the same manner as in the case of a complaint initially before the arbitrator.

Appeal within thirty days

26(5) Any party to whom an order of an arbitrator under this section applies may, within thirty days after being notified of the order, apply by Notice of Application to a judge of The Court of Queen's Bench of New Brunswick to review and set aside the order on the ground that it was made

(a) without jurisdiction, or

(b) on the basis of an error in law.

26(6) The Notice of Application shall be served by the appellant on the Commission and the other parties to the proceedings in accordance with the Rules of Court.

Notice to be served on Commission and parties

26(7) Upon service under subsection (6), the Commission and the arbitrator shall deliver to the clerk of The Court of Queen’s Bench of New Brunswick for the judicial district in which the application is to be heard all documents in their possession relating to the application and a copy of the order.

Commission and arbitrator to forward documents to clerk of the Court

26(8) Repealed: 2001, c.35, s.11.

26(9) After hearing the application, the judge may make any order in accordance with Rule 69.13 of the Rules of Court that he or she considers appropriate.

Judge rules in accordance with Rules of Court

26(10) Where an application under subsection (5) is dismissed, the judge shall make an order establishing the date on which the order made under subsection (2) is to be effective.

Judge establishes date

26(11) To the extent that they are not inconsistent with the provisions of this section, the Rules of Court apply in respect of an application made under subsection (5).

Rules of Court apply

26(12) In this section “arbitrator” means an arbitrator appointed under subsection 25(2).

Arbitrator

1994, c.70, s.5; 2001, c.35, s.11.

Order may be filed with the Court of Queen's Bench

27(1) Where an employer or union fails to comply with any terms of an order made under section 26, the employee or the Commission may, after the expiry of the period referred to in subsection 26(5), file a copy of the order in The Court of Queen's Bench of New Brunswick.

Order is enforceable

27(2) An order filed in The Court of Queen's Bench of New Brunswick under subsection (1) shall be entered and recorded in the Court and when so entered and recorded becomes a judgment of the Court and may be enforced as such against the person designated therein.

POWERS AND DUTIES OF OFFICERS

Officers may:

28(1) For the purpose of carrying out the provisions of this Act or the regulations, in all matters that relate to the health and safety of employees, an officer may

Enter and inspect without notice

(a) at any reasonable hour and without notice, enter upon and inspect any place or thing that he believes to be a place of employment, and at that place of employment conduct any tests, take photographs, make recordings, take any samples and make any examinations that he considers necessary or advisable;

Require documents

(b) require the production of, inspect and take copies of any records, books, plans or other documents;

Remove and copy documents

(c) upon giving receipt therefor, remove any material referred to in paragraph (b) that relates to the purpose of the inspection for the purpose of making a copy thereof, if such copying is carried

out with reasonable dispatch and the material in question is promptly thereafter returned to the person being inspected;

(d) inspect and take samples of any material, product, tool, equipment, machine or device being produced, used or found at the place of employment for which the officer shall be responsible until the material, product, tool, equipment, machine or device is returned to the person being inspected;

Inspect and take samples

(e) make such examinations and inquiries as he considers necessary for the purpose of ascertaining whether the provisions of this Act, the regulations or an order are being complied with;

Make inquiries

(f) make such investigation as he considers necessary into the cause and particulars of any incident, accident or occupational disease occurring at a place of employment, and in conducting such investigation examine any person who in the opinion of the officer has knowledge of the incident, accident or disease that has occurred;

Investigate and examine

(g) order that the place of employment, or part thereof, or anything therein, be left undisturbed for such time as is reasonably necessary for any of the purposes specified in paragraphs (d) and (f).

Preserve evidence

28(2) For the purposes of carrying out the provisions of this Act or the regulations, an officer may be accompanied by a technical expert who may carry out such examinations

May use technical expert

and inspections and take such samples as directed by the officer.

Officer may certify documents

28(3) Any copy made as provided in subsection (1) and purporting to be certified by an officer is admissible in evidence in any action, proceeding or prosecution as prima facie proof of the original without proof of the signature or official character of the person appearing to have signed the certificate.

2001, c.35, s.12.

Representatives of employee and employer shall accompany officer during inspection

29 Where an officer carries out any inspection in accordance with this Act, the officer shall be accompanied by an employee and employer committee member or by representatives of each group where no committee exists, or where committee members are not available.

1985, c.64, s.4.

Produce identification

30 An officer shall, on demand, produce his identification card signed by the President and Chief Executive Officer of the Commission.

1991, c.63, s.7; 1994, c.70, s.5.

Officer may order/enforce regulations in writing

31(1) An officer may give an order, orally or in writing, to any person for the carrying out of any matter or thing regulated, controlled or required by this Act or the regulations, and may require that his order be carried out within such time limit as he specifies.

Oral orders confirmed in writing

31(2) Where an officer makes an oral order under subsection (1), the officer shall make the order in writing before he leaves the place of employment.

32(1) Where an officer is of the opinion that unsafe or unhealthy working conditions may exist at a place of employment or that there may be a source of danger to the health or safety of persons employed therein or having access thereto, he may make an order, in writing, to the owner of the place of employment, the employer, contracting employer, contractor, sub-contractor, employee or a supplier directing him immediately or within such time as is specified in the order to do any or all of the following:

Officer may write order based on his opinion

(a) to suspend all work, or any portion of the work, where there exist unsafe or unhealthy working conditions or where the work contributes to the source of danger;

To suspend

(b) to take measures for guarding or controlling the source of danger;

To control danger

(c) to take measures to protect the health or safety of any person where there exists unsafe or unhealthy working conditions or where the work contributes to the source of danger;

To protect health or safety

(d) to take such measures as the officer considers necessary to ensure compliance with this Act and the regulations.

To take active measures

32(2) Where an officer makes an order in writing, he shall serve it on the owner, employer, contracting employer, contractor, sub-contractor, employee or supplier affected by the order.

Order must be served

32(3) For the purposes of this section, service of an order may be given

Definition of specified service

(a) by personal service in accordance with the Rules of Court under the *Judicature Act*; or

(b) by registered mail.

Officer actions when no compliance

32(4) Where an officer is of the opinion that any tool, equipment, machine or device does not comply with this Act or the regulations, the officer shall

Notice in writing

(a) give notice in writing to the contractor, sub-contractor, owner, operator, supplier or lessee of the tool, equipment, machine or device, that such tool, equipment, machine or device does not comply with this Act or the regulations; and

Restrict operation

(b) take any measure or make any order prescribed by regulation that prevents the unauthorized operation or use of such tool, equipment, machine or device.

2001, c.35, s.13.

Co-operation with officer

33 No person shall

(a) obstruct or delay an officer in the exercise of his powers or duties under this Act or the regulations;

(b) knowingly give false information to an officer in the exercise of his powers or duties under this Act or the regulations;

(c) fail to produce any certificate or document that he is required to produce

by or in pursuance of this Act or the regulations; or

(d) prevent any employee from appearing before or being questioned by an officer.

34 Any order given by an officer under section 32 shall not be rescinded and continues in force until the officer is satisfied that the unsafe work, tool, equipment, machine or device has been remedied and the threat to the health or safety of employees removed. Condition for rescinding order

35(1) Subject to subsection (2), where there is a committee or a health and safety representative at a place of employment and an officer has made an order under section 32, the officer Copy of order to JHSC and posted at workplace

(a) shall provide the committee or the representative with a copy of the order; and

(b) may post a copy of the order in a prominent place at the place of employment or part thereof.

35(2) Where there is no committee or health and safety representative, the officer shall post a copy of the order in a prominent place at the place of employment or part thereof. Officer to post order

36 Where an officer makes an order under section 32 and he has posted a copy of the order at the place of employment or part thereof, no person shall Order may not be removed or breached

(a) remove such copy of the order unless authorized to do so by an officer; and

(b) where the officer prohibits use of the place of employment, or part thereof, use the place of employment or part thereof except as permitted by the officer.

APPEALS

Appeal to Chief Compliance Officer within fourteen days

37(1) An owner, employer, contracting employer, contractor, sub-contractor, employee or supplier named in any order given by an officer under this Act or the regulations may, within fourteen days after the date the order was served, appeal that order by application to the Chief Compliance Officer who may confirm, vary, revoke or suspend the order appealed as promptly as is practicable.

37(1.1) For the purposes of subsection (1), an order of an officer includes advice in writing given to an employee under subsection 20(11).

Chief Compliance Officer may suspend operation

37(2) An appeal against an order in accordance with subsection (1) does not suspend the operation of the order but the Chief Compliance Officer may order the suspension of the operation thereof until the appeal is disposed of.

Chief Compliance Officer's decision remains in effect

37(2.1) Where the decision of the Chief Compliance Officer under this section is appealed under section 21 of the *Workplace Health, Safety and Compensation Commission Act*, the decision remains in effect until the Appeals Tribunal disposes of the appeal.

37(3) An officer shall provide a copy of any order confirmed, varied, revoked or suspended under this section or by the Appeals Tribunal to the committee where one exists, or to the health and safety representative, if any, and where there is no committee or representative, the officer shall post a copy of the order in a prominent place at the place of employment or any part thereof.

Officer shall provide final order

1994, c.70, s.5; 2001, c.35, s.14; 2007, c.12, s.8.

38 Repealed: 1994, c.70, s.5.

1994, c.70, s.5.

39 Repealed: 1994, c.70, s.5.

1994, c.70, s.5.

CONFIDENTIAL INFORMATION

40 Except for the purposes of the administration and enforcement of this Act and the regulations or as required by law or under the authority of the Commission

Confidentiality provisions

(a) an officer or a technical expert or any other person who at the request of an officer makes an examination, inquiry or a test shall not publish, disclose or communicate to any person any information, material, statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received under the powers conferred under this Act or the regulations;

Disclosure of investigation information prohibited

Disclosure of trade
secret prohibited

(b) no person shall publish, disclose or communicate to any person any secret manufacturing process or trade secret acquired, furnished, obtained or received under the provisions of this Act or the regulations;

(b.1) no person shall publish, disclose or communicate to any person any information acquired, furnished, obtained or received by or from an agency, board or commission for the purposes of, or in relation to, a determination by the agency, board or commission as to whether information in respect of a controlled product is confidential business information;

(b.2) no person shall allow any person to inspect or have access to any book, record, writing or other document containing information acquired, furnished, obtained or received by or from an agency, board or commission for the purposes of, or in relation to, a determination by the agency, board or commission as to whether information in respect of a controlled product is confidential business information;

No person to
disclose information
acquired under
40.1

(b.3) no person shall publish, disclose or communicate to any person any information acquired, furnished, obtained or received under section 40.1;

Identification of
informants
prohibited

(c) no person to whom information is communicated under this Act or the regulations shall divulge the name of the informant to any person; and

(d) no person shall disclose any information obtained in any medical examination, test or x-ray of an employee made or taken under this Act except in a form calculated to prevent the information from being identified with a particular person or case.

No person to disclose medical information except in non-identifiable form

1988, c.30, s.1; 1994, c.70, s.5.

40.1(1) An employer shall, in respect of any controlled product that is or was present in a place of employment, provide such information, including confidential business information, as is in the possession of the employer to a medical practitioner or registered nurse who requests information on the controlled product for the purpose of making a medical diagnosis, or rendering medical treatment to a person, in an emergency.

Confidential information to be made available for medical treatment

40.1(2) A person to whom information is provided by an employer under subsection (1) may disclose or communicate the information to any other medical practitioner or registered nurse only for the purpose mentioned in that subsection.

Confidential information may be disclosed to other practitioners for the purpose of medical treatment

1988, c.30, s.2.

LIABILITY

41 No action or other proceeding for damages lies or shall be instituted against the New Brunswick Occupational Health and Safety Commission, the former members or officers of the New Brunswick Occupational Health and Safety Commission or an officer appointed by one of them under this Act, for an act or

Commission members and officers indemnified

omission done or omitted to be done in good faith in the exercise or intended exercise of any power or duty under this Act or the regulations.

1994, c.70, s.5.

TOXIC SUBSTANCES

Prepare list of biological, chemical or physical agents

42(1) Every employer at a place of employment shall prepare a list, in co-operation with the committee at the place of employment, if one exists, of all biological, chemical or physical agents used, handled, produced or otherwise present at the place of employment which may be hazardous to the health or safety of employees or which are suspected by the employees of being hazardous.

Biological, chemical and physical agents shall be identified by common name

42(1.1) Except where otherwise exempted by the regulations in respect of a claim for an exemption from disclosure of confidential business information in respect of a controlled product, an employer, in preparing the list referred to in subsection (1), shall identify all such agents referred to in subsection (1) by their common or generic names where they are known to the employer.

Type of information required

42(2) For every biological, chemical or physical agent listed under subsection (1), other than a controlled product, the employer shall take all reasonable steps to ascertain from suppliers or otherwise and shall record

(a) the ingredients thereof and their common or generic name or names;

(b) the composition and the properties thereof;

(c) the toxicological effect thereof;

(d) the effect of exposure thereto whether by contact, inhalation or ingestion;

(e) the protective measures used or to be used in respect thereof;

(f) the emergency measures used or to be used to deal with exposure in respect thereof; and

(g) the effect of the use, transport, storage and disposal thereof.

42(3) The employer shall ensure that the list referred to in this section is kept current by amendments and shall provide a copy of the current list

List to be current

(a) to the committee where one exists or to the health and safety representative, if any; and

(b) upon request, to an officer or any employee.

42(4) Where the employer is unable to ascertain the ingredients or composition of any biological, chemical or physical agent listed under subsection (1), other than a controlled product, he shall promptly provide the Commission with the trade name, and the name and address of the manufacturer of the substance.

Unknown substances

1988, c.30, s.3; 2007, c.12, s.9.

NOTICES

Immediate reporting to Commission

43(1) Where an employee is injured in a manner that causes, or may cause, a fatality, loss of limb or occupational disease, or that requires or may require hospitalization, the employer shall ensure that notice of the injury is made to the Commission immediately after the occurrence thereof.

Notification of JHSC

43(2) Where an injury is reported under subsection (1), the employer shall immediately give notification to the committee or to the health and safety representative.

Accident site must be protected

43(3) Except as otherwise ordered by an officer, no person shall disturb the scene of an accident that results in serious injury or death except as is necessary

(a) to attend to persons injured or killed;

(b) to prevent further injuries; or

(c) to protect property that is endangered as a result of the accident.

Explosion, exposure must be reported

43(4) Where an accidental explosion or an accidental exposure to a biological, chemical or physical agent occurs at a place of employment, whether or not a person is injured, the employer shall notify the Chief Compliance Officer within a period of twenty-four hours after its occurrence.

Highway accidents not reported

43(5) This section does not apply to a place of employment that is a vehicle if the injury or accident occurs on a public road or highway.

1992, c.52, s.23; 2001, c.35, s.15.

44(1) Every owner or employer shall keep posted in a prominent place or places at the place of employment where they are most likely to come to the attention of the employees

Act, regulations and notices must be posted

(a) a copy of this Act and the regulations; and

(b) in addition to such notices and reports as are otherwise required by this Act or the regulations to be posted, any notice which an officer considers advisable to enable employees to become acquainted with their rights, liabilities and duties under this Act and the regulations.

44(2) Subsection (1) does not apply to a vehicle.

2001, c.35, s.16.

OCCUPATIONAL HEALTH SERVICE

45(1) The Commission may, having regard to the type of work being carried on, the number of employees employed and the degree of uncertainty of hazard at a place or places of employment, designate a place of employment or a class of places of employment as requiring an occupational health service.

Commission may delegate

45(2) Where a place of employment has been designated under subsection (1) or is a member of a class of places of employment designated under subsection (1), the employer shall cause an occupational health service to be established and maintained for that place of employment in accordance with the regulations.

Employer must establish service

MEDICAL EXAMINATIONS

Commission may
request medical

46(1) Where the Commission has reason to believe that an employee is or may be affected with an occupational disease, it may request such employee, with his consent, to undergo a medical examination for the purpose of determining whether or not such employee is affected with an occupational disease.

Employee status is
protected

46(2) Except in accordance with an order of the Commission made on the advice of a medical practitioner, no employer shall, without the consent of the employee, alter in any manner or prejudicially affect the status of such employee by reason of the results of any medical examination carried out under this section.

Employer to pay
costs

46(3) A medical examination carried out under this section shall, where practicable, be carried out during the normal working hours of the employee, and the cost shall in all cases be paid by the employer.

Employee not to
lose wages

46(4) Where an employee is examined during his normal working hours, his employer shall not make any deductions of wages or other benefits for the time lost by the employee in going to, attending or returning from a medical examination.

46(5) Where a medical practitioner

Medical reports to
Commission only
with consent of
employee

(a) has attended an employee who became ill or was injured while engaged in his employment, or

(b) has carried out a medical examination under subsection (1),

he shall, at the request of the Commission, and with the consent of the employee, provide the Commission with such medical reports as it requires in relation to the employee attended or examined.

2001, c.35, s.17.

ENFORCEMENT

47(1) Every person who violates or fails to comply with any provision of this Act or the regulations or fails to comply with an order made under this Act or the regulations, commits an offence and is liable on conviction

Penalty on conviction

(a) to a fine of not more than \$250,000,

or

(b) to a term of imprisonment not exceeding six months, or to both.

47(2) Where an offence under this Act is committed or continued on more than one day, it shall be deemed to be a separate offence for each day on which the offence is committed or continued.

Each day a separate offence

1989, c.28, s.2; 1994, c.70, s.5; 2001, c.35, s.18; 2008, c.11, s.22.

47.1 Repealed: 1990, c.22, s.36.

1989, c.28, s.3; 1990, c.22, s.36.

47.2 Repealed: 1990, c.22, s.36.

1989, c.28, s.3; 1990, c.22, s.36.

Any prosecution must begin within a year of offence

48 Proceedings in respect of an offence under this Act shall not be commenced except within one year after the occurrence of the offence.

1990, c.22, s.36.

Circumstances under which a corporation officer is party to the offence

49 Where a corporation has been convicted of an offence under section 47, any officer, director, manager or agent of the corporation who knowingly directed, authorized, assented to, acquiesced or participated in the commission of the offence is a party to the offence.

CODE OF PRACTICE

If required by regulations

50(1) An employer shall, when required by regulation, adopt a code of practice specified by regulation or establish a code of practice.

If required by Commission

50(2) An employer shall, when required in writing by the Commission, adopt a code of practice specified by the Commission or establish a code of practice.

Commission may require employer

50(3) The Commission may

To establish

(a) require an employer to establish or adopt a code of practice if the employer has not been required by regulation to establish or adopt a code of practice,

To revise

(b) require an employer to revise a code of practice adopted or established by the employer under subsection (2), or

Commission may revise

(c) revise a code of practice to be adopted by an employer under subsection (2).

50(4) A code of practice shall be posted by an employer in a prominent place at the place of employment.

Code must be posted

1988, c.30, s.4.

REGULATIONS

51 The Lieutenant-Governor in Council may make regulations

Authority to make regulations

(a) defining any word or expression used in this Act but not defined in this Act;

(b) providing for a continuing study of health and safety codes, of statistical data pertaining to accidents and accident prevention, of occupational health and hygiene requirements and of safety standards and inspection and enforcement thereof;

(c) respecting the adoption and implementation of appropriate health and safety codes, standards and guidelines with respect to industry generally, to specific industries, to industry sub-groupings or to particular plants or any combination thereof;

(d) prescribing health and safety standards to be complied with at or in places of employment;

(e) prescribing minimum standards of welfare facilities for employees;

(f) establishing conditions as to the design, construction and use of any place

of employment in order to protect the health and safety of employees;

(g) prohibiting or regulating the manufacture, supply, storage, handling or use of any tool, equipment, machine or device or the use of any place of employment;

(h) prescribing the measures that may be taken and the orders that may be made by an officer to prevent the unauthorized use and operation of any tool, equipment, machine or device;

(i) respecting the safe use of any place of employment, tools, equipment, machines or devices;

(j) prohibiting or regulating the manufacture, supply, storage, handling or use of any substance, material or biological, chemical or physical agent in order to protect the health and safety of employees;

(j.1) respecting the storage, handling or use of a controlled product;

(j.2) respecting the labelling or identification of a controlled product;

(j.3) respecting material safety data sheets in respect of a controlled product;

(j.4) respecting employee training and instruction in relation to controlled products;

(j.5) respecting the disclosure of information in respect of a controlled

product, including disclosure of confidential business information;

(j.6) respecting exemptions from disclosure of confidential business information in respect of a controlled product;

(j.7) respecting the establishment or designation of an agency, board or commission to determine whether information in respect of a controlled product is confidential business information;

(j.8) respecting the procedures, powers and functions of an agency, board or commission referred to in paragraph *(j.7)*;

(j.9) defining “supplier” for the purposes of regulations made under paragraphs *(j.1)* to *(j.8)*;

(k) imposing requirements with respect to the testing, labelling or examination of any substance or material in order to protect the health and safety of employees;

(l) imposing requirements with respect to the labelling of biological, chemical or physical agents supplied by a supplier;

(m) requiring and governing the posting of health and safety notices, placards and signs issued by the Commission;

(n) restricting the performance of certain tasks to persons having certain qualifications;

(o) where necessary to ensure the health and safety of employees, requiring the making of arrangements by the employer for the temporary reassignment of work, of any person or persons or of any class of persons, in specified circumstances;

(p) respecting the reporting by medical practitioners and others of employees suffering from, or believed to be suffering from, an occupational disease;

(q) respecting the nature and frequency of medical examinations of employees or any class of employees;

(r) requiring the making of arrangements by employers for the prevention of occupational disease and for securing the health of employees, including arrangements for medical examinations and health surveys;

(s) requiring the making of arrangements by employers for measuring and monitoring the atmospheric or other conditions of places of employment;

(t) respecting

(i) the establishment and maintenance of occupational health services, and

(ii) services that are to be provided by any occupational health service;

(u) respecting the use of protective equipment by employees or classes of employees;

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- (u.1)* respecting codes of practice;
- (v)* imposing requirements with respect to the employment of persons under eighteen years of age;
- (w)* requiring the making of reports by employers to the Commission;
- (x)* respecting the procedures for carrying out inquiries held under section 7;
- (y)* respecting the appointment of arbitrators by the Commission and the procedures for carrying out arbitrations under section 25;
- (z)* Repealed: 1994, c.70, s.5.
- (aa)* exempting places of employment from the application of this Act;
- (bb)* respecting forms for use under this Act;
- (cc)* respecting records to be kept by employers and submitted to the Commission;
- (dd)* prescribing the fees payable by employers for inspections required under this Act;
- (dd.1)* respecting the content, duration, administration and delivery of an educational program for persons who are or may become members of joint health and safety committees and or a health and safety representative;

(*dd.2*) prescribing trades for the purposes of subsection 14.4(1);

(*ee*) prescribing duties to be performed by committees and respecting procedures for the operation of committees and the making of reports by committees.

1988, c.30, s.5; 1994, c.70, s.5; 2001, c.35, s.19; 2007, c.12, s.10.

Repealed

52 *The Occupational Health and Safety Act, chapter O-0.1 of the Acts of New Brunswick, 1976, is repealed.*

Repealed

53 *Subsection 41(3) of the Employment Standards Act, chapter E-7.2 of the Acts of New Brunswick, 1982, is repealed and the following substituted therefor: 41(3) Sections 39 and 40 are subject to the provisions of the Occupational Health and Safety Act respecting the employment of a child.*

Coming into force

54 *This Act or any provision thereof comes into force on a day to be fixed by proclamation.*

N.B. This Act was proclaimed and came into force March 16, 1984.

N.B. This Act is consolidated to April 30, 2008.

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