



EMPLOYERS' ADVOCACY COUNCIL

SUBMISSION TO:

The Ministry of Labour's Consultation on the Expert Panel Review of the Health and Safety System

Monday June 28, 2010

Introduction on Background

Ontario's Minister of Labour has appointed an expert advisory panel to review the province's occupational health and safety system. The panel will report back in the fall of 2010 with recommendations for improving prevention and enforcement activities.

The panel will examine a range of issues, including but not limited to:

- the roles and responsibilities of the system partners
- the impact of the underground economy on workplace health and safety
- the protection of vulnerable workers
- the use of incentives to motivate superior health and safety performance
- linking procurement of goods and services to health and safety performance
- the role of joint health and safety committees
- the impact of advancements in technology/innovation on health and safety
- mandatory entry-level health and safety training

The expert panel will rely on the advice of:

- labour organizations
- businesses
- workers
- health and safety delivery organizations (such as workplace health and safety associations, some colleges and universities, commercial training organizations and consultants)
- professionals who provide services to workplaces and workers

Below, you'll find detailed information about Ontario's occupational health and safety system and the issues the expert review panel will examine. Specific questions follow each issue. Please think about these questions and submit your comments.



Partners in the Occupational Health and Safety System

The Ministry of Labour, the Workplace Safety and Insurance Board and the health and safety associations are the public sector partners in the province's occupational health and safety system. They all have distinct roles and mandates, with the common goal of preventing occupational injuries and illnesses.

Ministry of Labour

The ministry's mandate is to set, communicate and enforce workplace standards for occupational health and safety while encouraging greater workplace self-reliance. These standards are prescribed in the Occupational Health and Safety Act and its regulations.

Ministry inspectors, supported by professionals such as engineers and hygienists, inspect workplaces to determine compliance with the Act and its regulations. They also investigate critical injuries, fatalities, work refusals and complaints, issuing orders and tickets when there is non-compliance and initiating prosecutions when appropriate. In 2008 the MOL launched a compliance strategy, "Safe at Work Ontario", which targets inspections on the basis of lost-time injury claims and costs, compliance history of an employer, and hazards inherent to the sector, as well as other factors unique to an employer.

Inspectors also monitor the functioning of the internal responsibility system in individual workplaces as set out in the Act. When workplace parties need help complying with the Act and its regulations, the ministry directs them to the appropriate system partners for assistance.

Other regulatory agencies have the authority to enforce legislative requirements which directly impact workplace health and safety. They can also play an important role in improving compliance with requirements to protect the health and safety of workers. Examples include the Technical Standards and Safety Authority and the Electrical Safety Authority.

In addition to provincial enforcement activities, the police may initiate prosecutions under the Criminal Code, as a result of amendments to the Code in Bill C-45.

Inter-ministerial Coordination: Issues that can have an impact on workplace health and safety sometimes fall within the jurisdiction of other government ministries. Examples include toxic use reduction legislation under the Ministry of Environment and infection control requirements under the Ministry of Health and Long-Term Care. Concerns have been raised that, without appropriate communication and coordination, decisions may be made by government ministries without full consideration of the impact on workplace health and safety.

Workplace Safety and Insurance Board

The Workplace Safety and Insurance Board (WSIB) is an arm's length agency of the Ministry of Labour. The Board is funded by premiums collected from employers. Its key roles include:

- Preventing injuries, illnesses and fatalities.

Section 4 of the Workplace Safety and Insurance Act (WSIA) sets out this role for the Board, including:

- promoting public awareness of occupational health and safety
- developing certification standards for the purposes of the Occupational Health and Safety Act
- funding occupational health and safety research
- Administering the province's no-fault workplace insurance system.

The WSIB compensates injured workers and the survivors of deceased workers. The Board assists injured workers in the early and safe return to work. The WSIB also funds and oversees the province's occupational health and safety education and training system.

In 2008 the WSIB introduced "*Road to Zero: A Prevention Strategy*", which outlined an updated prevention approach based on four key thrusts:

- creating a national habit of safety;
- greater alignment of prevention partner activities to lead to improved outcomes;
- instilling an evidence-based, priority-focused, and outcome-measurement mindset throughout the prevention system;
- developing prevention partner capabilities, information management tools, and communications technology.

The WSIB plays a role in enforcement as well through auditing programs such as Workwell. Audits can result in surcharges and premium increases to employers who demonstrate poor accident records and sub-standard compliance with the Occupational Health and Safety Act. The WSIB also has authority to issue administrative penalties for violations of certain provisions of the WSIA.

The WSIB has the mandate to use financial incentives in the form of premium rebates or surcharges to encourage employers to improve their health and safety performance. For example, the Workplace Safety and Insurance Act authorizes the Board to establish experience and merit rating programs (section 83) and to increase or decrease the premiums payable by a particular employer (section 82).



Health and Safety Associations

There are six health and safety associations (HSAs) in Ontario. They provide a range of occupational health and safety support services to employers and workers. Funding for these organizations is provided in part by the WSIB from premiums collected from employers. Four of the six associations are structured to serve specific industries or sectors of the economy:

- Health and Safety Association for Government Services serves the education, municipal and health care sectors.
- Safe Workplace Promotion Services Ontario serves the agriculture, industrial and service sectors.
- Workplace Safety North serves the mining, forestry and pulp and paper industries. It also supports other sector employers in the Northern region.
- Infrastructure Health and Safety Association serves the construction, transportation and electrical utility industries.

These four associations, which recently amalgamated from 12 associations, develop and deliver education and training programs. They also, at the request of employers, carry out workplace audits and provide expert consultation and technical services.

The Workers' Health and Safety Centre, the fifth association, is designated as a "training centre" under the WSIA. This association develops and delivers training programs on a variety of workplace hazards and issues, applicable to all sectors of industry.

Finally, Occupational Health Clinics for Ontario Workers, the sixth association, is a network of five clinics across Ontario. These clinics are staffed by a multidisciplinary team of health professionals who provide a range of services, including diagnosis of work-related illness and injuries, promotion of prevention strategies and research services.

Efforts to Improve Collaboration and Integration

In January 1998, the Ministry of Labour released a paper entitled "Preventing Illness and Injury: A Better Health and Safety System for Ontario Workplaces". The paper, known as the "Prevention Strategy," outlined a plan to enable the ministry, WSIB and HSAs to work as partners – to make better use of resources, eliminate overlap and develop a more integrated and collaborative system to improve workplace health and safety.

Since then, the partners have worked to move in the directions set out in the 1998 Prevention Strategy. A key first step was to develop greater communication and collaboration among system partners. The Occupational Health and Safety Council of Ontario, composed of senior staff from system partners, was established in 1999 as a forum



for the senior managers to meet regularly and provide collective leadership and strategic direction to the occupational health and safety system.

A key result of this collaboration was greater alignment of priority activities. If an issue became the subject of greater enforcement by the ministry, then HSAs were prepared to offer training and consulting services. For example, the system partners, in conjunction with an advisory panel of labour and employer members appointed by then Minister of Labour Chris Bentley, worked together to address musculoskeletal disorders, which account for 42 per cent of all lost-time injuries, through the production of guidance material and targeted inspection and consulting services.

Since 2008, the system partners have collaborated on a number of safety blitzes, targeting a variety of hazards and types of work across many industries.

In addition, the system partners have worked together to develop strategies that target employers with poor health and safety performance. The ministry inspects the poorest performers while HSA staff visit other poor performers to provide education and consulting services.

Between 2004 and 2008, the OHS system partners focused their efforts on 30,000 workplaces with the poorest health and safety records. These workplaces represented ten per cent of all companies registered with the WSIB but accounted for 40 per cent of all lost-time injuries and claims costs. Between 2004 and 2008 there was a 20 per cent reduction in the lost-time injury rate, resulting in a significant savings of direct and indirect costs associated with workplace injuries.

Questions

1. How can the Ministry of Labour, the WSIB and the HSAs be better aligned in terms of service and program delivery?
2. What would give employers and workers a better understanding of the roles of the ministry, WSIB and HSAs?
3. Can you comment on the effectiveness of the ministry, WSIB and HSAs in preventing occupational injury and illness?
4. What shortcomings, gaps or duplication of services should be addressed by this review?
5. Should stakeholders and other organizations, such as private foundations and non-government organizations, be involved in the planning and design of occupational health and safety system initiatives, and if so, how?
6. What enforcement strategies could be used to improve compliance with legislation, codes and standards?
7. Should the government use administrative penalties as another enforcement tool and what sort of violations should these penalties be applied to?
8. What can the government do to ensure that other ministries consider occupational health and safety implications when they are making decisions?



Underground Economy

Research has shown that the underground economy contributes to poor occupational health and safety practices and increases risks to workers. Employers operating in the underground economy consciously take steps to avoid government registration requirements and thereby don't participate in programs that monitor or provide motivation for compliance with health and safety laws. For example, by not registering for workplace safety and insurance coverage, they are not subject to the financial penalties or incentives administered by the WSIB that reinforce healthy and safe workplaces. In addition, they do not have access to the education and training support systems of the health and safety associations.

The effect of these employers' actions puts economic pressure on compliant employers. They create an uneven playing field for businesses and could result in an overall deterioration of workplace health and safety. In addition, workers injured while working for underground employers in covered industries are entitled to compensation benefits, the cost of which are borne by the pool of registered employers.

Employment in the underground economy is also often linked to vulnerability of workers. The nature of the employment relationship places workers in situations where they are reluctant to raise health and safety concerns or to contact enforcement organizations when there is non compliance with health and safety laws. In some instances, workers may choose to work in underground employment in order to hide income from government tax collection.

Current efforts to detect underground employers include anonymous complaint systems, as well as sharing registration information between certain enforcement organizations. However, this has limitations when an employer is successful in avoiding all enforcement organizations.

Questions

1. What could regulators do to enhance these existing systems and techniques to detect underground employers?
2. How could employees of underground employers be enabled and protected to inform regulators about an underground employer?
3. What kind of partnerships within and external to the prevention system, as well as with the public, would work best to address the underground economy?
4. How might legitimate employers motivate underground employers to comply with the law and/or help regulators identify underground employers?
5. How could a media campaign about the negative consequences of the underground economy effectively influence consumers to not purchase goods or services offered by someone operating in the underground economy?



Vulnerable/Precarious Workers

Concern has been raised that workers employed in short-term, part-time or low-wage jobs are at greater risk of exposure to unsafe working conditions. Temporary foreign workers, recent immigrants and workers without proper immigration status may also be at risk. Such workers may receive little or no health and safety training and have less experience in recognizing hazards. Their vulnerable employment status may result in them being less likely or confident to raise health and safety concerns.

Health and safety research has found that certain workers are more susceptible to injury at work. Relevant factors include age, extent of previous experience and the amount of job-specific training. For example, workers are four times more likely to be injured within the first month of starting a new job or taking on a new role within an existing job.

Young workers, aged 15 to 24, are also more likely to be injured than other workers. In Ontario, a number of specific initiatives have been undertaken to protect young workers, for example, the Young Worker Awareness Program, Live Safe! Work Smart! and WorkSmartOntario. Recent evidence shows that these initiatives are having a positive impact.

Questions

1. Who would you consider to be a vulnerable worker?
2. How can government require and/or motivate employers to protect the health and safety of these workers?
3. Could anonymous complaints be effective in enforcing health and safety compliance to protect vulnerable workers?

Incentives/Supply Chains

Incentives: Government legislation and regulations set minimum standards for occupational health and safety. Enforcement of these standards and the imposition of penalties when there are violations are incentives to comply with the law. However, there are significant benefits for both workers and employers if more than minimum compliance is achieved.

Many jurisdictions, including Ontario, use various types of incentive programs to motivate organizations to go beyond minimum standards. Such programs can be positive to reward good performance, or negative in response to poor performance. Rewards and penalties can be monetary (e.g., rebates or surcharges) or administrative (e.g., relief from the red-tape burden on an organization).

In 2008, the WSIB's experience rating programs underwent an independent review. While the review supported the Board's financial incentive programs in principle, it also concluded that such incentives must be directly linked to health and safety performance. The incentives



must not encourage activities that violate the WSIA or are undertaken primarily for financial gain, such as under-reporting injury claims.

Supply Chains / Contracting for Goods and Services: Some private sector firms have developed incentives that link high health and safety performance to preferential supply chain relationships. For example, a company may require potential suppliers and contractors to incorporate health and safety into the design stage of a project. Others may limit access to the bidding process based on their occupational health and safety performance or participation in a recognized health and safety management system or accreditation program.

Questions

1. What are reliable indicators of health and safety conditions in workplaces?
2. What motivates employers to constantly improve their health and safety performance?
3. Should Ontario continue to have a system of incentive programs to motivate organizations to go beyond minimum standards of health and safety? If so, what indicators or activities such as operation of an occupational health and safety management system, should be used to verify that a workplace is a superior health and safety performer? How should such incentive programs be administered?
4. Should there be incentive programs directed at parties other than employers, such as supervisors and workers?
5. Is there an incentive program currently in place in another jurisdiction that you would recommend as a best practice which rewards superior health and safety performance?
6. Should there be non-monetary incentives? If so, what form should such incentives take?
7. How can accountability for compliance with the law be ensured when goods and/or services are purchased through a chain of contracts and sub-contracts?
8. Should government encourage and support the development of supply chain incentives and, if so, how?

Joint Health and Safety Committees/Internal Responsibility System

Joint Health and Safety Committees: The Occupational Health and Safety Act requires a joint health and safety committee (JHSC) to be established in a workplace where 20 or more workers are regularly employed, or where designated substances are used. The Act requires the committee to have management and worker representation. The Act also sets out the specific functions and powers of a committee, including the right to participate in investigations of fatalities by the workplace parties, critical injuries and work refusals, and a requirement for a worker member to inspect the workplace on a regular basis.

The Act also requires at least one worker member and one management member of a JHSC to be certified by completing basic as well as workplace/hazard-specific health and safety



training. The standards for certification training are set by the WSIB and are currently under review.

Smaller workplaces with six to nineteen regularly employed workers are required to have a worker health and safety representative instead of a committee. The representative generally has the same functions and powers as a JHSC. Joint committees and representatives are advisory. An employer who receives written recommendations from a JHSC or representative is required to respond in writing within 21 days.

The JHSC or representative provide a mechanism for workers to participate in resolving workplace health and safety issues, which is one of the fundamental rights of workers under the Occupational Health and Safety Act.

Internal Responsibility System: Workers and employers must share the responsibility for occupational health and safety. This concept of an internal responsibility system is based on the principle that the workplace parties themselves are in the best position to identify, and develop solutions for, health and safety problems. Ideally, the internal responsibility system involves everyone, from the company chief executive officer to the worker. How well the system works depends upon whether there is a complete, unbroken chain of responsibility and accountability for health and safety.

Several provisions of the Occupational Health and Safety Act are aimed at fostering the internal responsibility system, including:

- the requirement for employers to have a health and safety policy and program
- the direct responsibility that officers of a corporation have for health and safety

Joint health and safety committees and health and safety representatives have a role to play in the internal responsibility system. The Act sets out the basic rules of operation for them.

Concerns have been raised that workers may not be able to play a meaningful role in the internal responsibility system as it is currently structured or that they may fear reprisals for raising health and safety concerns or exercising their rights under the legislation.

Questions

1. Is a JHSC an effective mechanism to prevent workplace injury and illness?
2. How can JHSCs make effective contributions to workplace health and safety?
3. What leadership behaviours are expected from a JHSC?
4. What measures could be used to ensure that JHSCs exist and function effectively at workplaces where they are required?
5. What impediments are there to the effective functioning of a JHSC within the internal responsibility system?
6. Is the current system of certification training adequate and, if not, what is needed to make it more effective?

7. Should a worker health and safety representative be required at every workplace where a JHSC is not required?
8. What impediments or barriers are there which may prevent a worker from participating within the internal responsibility system to identify and resolve health and safety concerns?
9. What can the government do to strengthen the internal responsibility system and ensure that all workplace parties are able to play a meaningful role in the internal responsibility system?
10. Is the reprisal protection currently provided sufficient to protect workers who raise health and safety concerns or exercise their rights under the legislation?
11. What role should the various partners play in promoting a robust and functional internal responsibility system in Ontario workplaces?

Technology/Innovation

Advances in technology have significantly improved health and safety in the workplace. Information technology provides tools for analyzing health and safety performance and needs as well as for communicating and accessing information. Innovations in manufacturing and construction have resulted in safer equipment and production methods. Examples include:

- using less harmful substances while maintaining or improving production quality.
- using robots that can perform complex physical tasks, thereby reducing repetitive strain injuries.

At the same time, introducing a new technology or process can create unexpected health and safety hazards if there is:

- inadequate planning
- no assessment at the design stage
- no post-installation evaluation

Questions

1. Do you have examples of how information or manufacturing technology has significantly improved health and safety in your workplace; and how advances in technology can be extended to workplaces with limited or no access to them?
2. Have you encountered situations where introducing a new technology created potential health and safety hazards? What did you do to identify and control / eliminate these hazards? What steps could have been taken at the onset to prevent the hazards from occurring?
3. What measures can be taken at the pre-design or design stage to eliminate hazards? Are you aware of any methods used in other jurisdictions to identify and control hazards before introducing a new process or changing an existing one?
4. What barriers have you experienced in implementing new technology to improve health and safety?



5. What electronic data and information collected by the various OHS system partners should be shared among the occupational health and safety system partners and the public?
6. How can government policy and regulations assist in the use of new technology to improve health and safety?

Training

The Occupational Health and Safety Act requires that workers be provided with information and instruction to allow them to work safely. This includes providing the information and instruction needed by supervisors to fulfill their responsibilities under the Act.

In some instances, this may involve large amounts of complex information and require formal training. The Act and its regulations, in some cases, outline specific training requirements for operating equipment and performing certain tasks. This may involve defined curriculum and training provided by accredited training organizations. In other situations, the outcomes of the training are prescribed in law, but the curriculum and delivery are not.

The diversity of work tasks and equipment, workplaces and sectors makes “one size fits all” training a very contentious topic. Both employers and labour support the principle that workers should receive the information and training they need to work safely. This benefits all parties in the elimination of injuries and other costs that arise with incidents where workers are injured or nearly injured. The challenge is delivering the information and training effectively and efficiently.

The diversity of the workforce also provides training challenges. English as a second language and levels of literacy of the workers in the workplace need to be taken into consideration when designing and delivering training and instruction.

Questions

1. Are there training principles and methods that are key elements of effectively imparting health and safety knowledge to workers?
2. Should there be mandatory entry-level training for workers, supervisors and managers? Should the curriculum and method of training be prescribed?
3. Are there criteria that should guide decisions on when a specific training program should be mandatory?
4. Do you have an example of a highly effective training program that you could describe?
5. When providing health and safety information, instruction and training to workers, how do you take into account: (1) literacy levels, in any language; and (2) the presence of multiple languages at the workplace?
6. How have you incorporated visual aids (e.g., pictures, symbols, demonstrations, etc.) into health and safety training?