

ONTARIO NURSES' ASSOCIATION

SUBMISSION

ON

**MODERNIZING REGULATORY REQUIREMENTS
PRESCRIBED FOR PART VII – NOTICES UNDER THE
*OCCUPATIONAL HEALTH AND SAFETY ACT***

February 12, 2021



Ontario Nurses' Association

ONTARIO NURSES' ASSOCIATION

85 Grenville St., Suite 400,

Toronto, ON M5S 3A2

Phone: 416-964-8833

Fax: 416-964-8864

www.ona.org

Introduction

The Ontario Nurses' Association (ONA) is the union representing 68,000 front-line registered nurses, health-care professionals, and more than 18,000 nursing student affiliates. Our members provide care in Ontario hospitals, long-term care facilities, public health, the community, clinics and industry.

ONA appreciates the opportunity to provide stakeholders comments on the proposed changes to modernize regulatory requirements prescribed for Part VII Notices under the *Occupational Health and Safety Act (OHSA)*.

Executive Summary

Critical Injury

Re. *R.R.O 1990, Reg. 834 Critical Injury – Defined* should not be incorporated into a consolidated regulation that is specific to prescribed written notices because a critical injury applies to other legislative obligations (i.e., anchors the investigative mandate of certified worker members – *OHSA* Sec. 9(31)).

Medical Attention

ONA is supportive of amending or creating subordinate legislation to include a definition of medical attention. However, a goal to create certainty should not include an interpretation of medical attention in a narrow or exclusive manner. That is, the definition of medical attention must be inclusive and amenable to advances in the delivery of health care.

In our view, the pandemic has identified gaps in the triggering definitions to provide notices to the health and safety committee. The MOLSTD should include “a period of isolation or quarantine following a workplace exposure to a communicable disease” in the definition of “...disabled from performing his or her usual work...”. This effort will support more inclusive conditions for the providing prescribed notices as well as bridging the two silos of health and safety and infection protection and control.

Records

ONA is supportive of incorporating a mandate for the retention of written reports or notices that relate to health and safety, but those records should be maintained for a minimum **two** years or such period as necessary to ensure the two most recent records are kept.

Written Reporting Requirements

The enactment of a regulation that prescribes written reporting requirements that are applicable to all workplaces is an important first step in creating stronger internal responsibility systems. However, the current Section 51 and Section 52 on reporting obligations apply to distinct workplace injury processes that require specific information relating to the type of injury. As such, reporting requirements ought to be reflective of the differing causes of workplace injury or illness.

Critical Injury

Regulation 834 – Critical Injury – Defined is subordinate legislation to the *OHSA*. The *OHSA* places obligations on employers and empowers worker health and safety representatives when a critical injury occurs.

The obligations of employers are to provide prescribed written notices to the Ministry of Labour, Training and Skills Development (MOLTSD), the committee, the health and safety representative, and the trade union¹. The worker health and safety representative or committee is empowered to investigate cases where a worker is critically injured.²

The regulation defining critical injury is more accessible as a standalone regulation because it is not buried within the *Act* or one of its 25 current regulations.

A common complaint of employers is that they did not know what a critical injury was or where to find the definition, and cite that as the reason why they often do not fulfil their prescribed written reporting obligations. However, if the definition of what constitutes a critical injury is subsumed by a consolidating regulation, employers will struggle more to locate the definition, continue to fail with their prescribed written obligations, and will ultimately undermine efforts to create safe workplaces.

ONA supports increasing the clarity of the regulated definition because the current wording of the definition of Critical Injury and the listed conditions³ contributes to conflicting interpretations as to whether being “serious” is enough to trigger the notice or whether the injury needs to be a serious version of the listed conditions.

Additionally, the Ontario Labour Relations Board (OLRB) has determined that ankle and wrist fractures are captured by the listed conditions but some employers do not consider ankle and wrist fractures to be critical injuries. Therefore, the language adopted should be broad and expansive to allow for obvious inclusion of fractures and associated injuries in the listed conditions of critical injuries.

The statutory definition of a critical injury triggers duties and responsibilities which should remain distinctive and obvious by maintaining a standalone regulation under the *Act*. This will assist all workplace parties to identify with certainty the injuries considered critical by the *Act*.

¹ Notice of death or injury

OHSA Sec. 51 (1) Where a person is killed or critically injured from any cause at a workplace, the constructor, if any, and the employer shall notify an inspector, and the committee, health and safety representative and trade union, if any, immediately of the occurrence by telephone or other direct means and the employer shall, within 48 hours after the occurrence, send to a Director a written report of the circumstances of the occurrence containing such information and particulars as the regulations prescribe.

² Notice of accident, inspection by representative

OHSA Sec. 8(14) Where a person is killed or critically injured at a workplace from any cause, the health and safety representative may, subject to subsection 51 (2), inspect the place where the accident occurred, and any machine, device or thing, and shall report his or her findings in writing to a Director.

OHSA Sec. 9(31) The members of a committee who represent workers shall designate one or more such members to investigate cases where a worker is killed or critically injured at a workplace from any cause, and one of those members may, subject to subsection 51 (2), inspect the place where the accident occurred, and any machine, device or thing, and shall report his or her findings to a Director and to the committee.

³ R.R.O 1990, Regulation 834, Sec. 1, “...“critically injured” means an injury of a serious nature that,...”

Medical Attention

Medical attention⁴, like critical injuries, triggers certain rights and responsibilities. However, a difference that creates confusion among MOLTSD stakeholders is that medical attention is not defined in the *Act* or regulations. This is further confounded by the preceding clause in the *Act*, “a person is disabled from performing his or her usual work...”. A definition to promote clarity and certainty would benefit all stakeholders and is overdue.

ONA proposes the following definition:

Medical Attention means requiring an assessment or treatment from a regulated health professional, and includes:

- Any controlled act (*Regulated Health Professions Act*, 1991, Sec 27(2));
- Prescription drugs;
- Services provided at hospitals and health facilities;
- Using any devices with rigid stays or other systems designed to immobilize parts of the body;
- Using wound closing devices, such as surgical glue, sutures, and staples; or
- Administration of oxygen to treat injury or illness.

This definition provides certainty and clarity to MOLTSD stakeholders by identifying who provides medical treatment (i.e., psychotherapist) or what activity shall be considered medical treatment, while also being inclusive to adapt to emerging medical treatments.

Notices

The internal responsibility system (IRS) is a foundational pillar supporting effective processes to improve health and safety in workplaces. However, the IRS depends on information to animate its process, and the *Act* supports this with prescribed written notices for accidents and occupational illness.

ONA supports a single set of written reporting requirements but recognizes that current regulatory requirements fall short in several circumstances:

- **Incidents of workplace violence.** Part VII – Sec. 52(1) of the *Act* states in part, “...because of an accident, explosion, fire or incident of workplace violence at a workplace...” but does not have a corresponding reference in the prescribed requirements. The regulation should adopt the following wording, “If an accident, explosion, fire, or *incident of workplace violence at a workplace* causes injury to a worker at a facility that disables the worker from performing his or her usual work, the written notice required by subsection 52 (1) of the *Act* shall include...” This will provide consistency across the *Act* and the associated regulation(s).

⁴ Notice of accident, explosion, fire or violence causing injury

*OHS*A Sec. 52 (1) If a person is disabled from performing his or her usual work or requires medical attention because of an accident, explosion, fire or incident of workplace violence at a workplace, but no person dies or is critically injured because of that occurrence, the employer shall, within four days of the occurrence, give written notice of the occurrence containing the prescribed information and particulars to the following:

- a) The committee, the health and safety representative and the trade union, if any.
- b) The Director, if an inspector requires notification of the Director.

- **Occupational Illness.** The proposed prescribed written notices should clarify and explicitly reference that the onset of occupational mental injury is an occupational illness for purposes of the *Act*.
- **Exposures.** Absences (e.g., self-isolation) from the workplace due to the exposure of biological, including infectious diseases, or chemical agents in the workplace.
- **Consequences of failure.** Failure to provide notices pursuant to Part VII of the *Act* should be included into the schedule of offences to allow for robust compliance of the provisions.

Additionally, the current pandemic of SARS-CoV-2 has made obvious gaps in identifying which workplace parties receive the prescribed written notice. The regulation should make clear and unequivocal that all workplace parties, and specifically *each* trade union, receive the prescribed written notices.

The content of the proposed consolidated written information does not adequately contemplate the circumstances of the onset of occupational illness. That is, *O. Reg 67/93 Sec. 5(5)* requires information that is not captured by the proposed consolidated written notice. ONA supports retaining the following information from *O. Reg. 67/93*:

- “a description of the cause or the suspected cause of the occupational illness” – This will support JHSCs identify biological, chemical, or other work process that contribute to long latency occupational illness.
- “the period when the worker was affected” – This information will assist JHSCs identify other workers exposed or provide valuable information during consultation of a surveillance program.

The above referenced clauses should be retained in the consolidated notice of accident language to support the workplaces parties in their efforts to reduce occupational illnesses.

Although some of the regulations prescribing written notices and reports do not always explicitly refer to “incidents involving a worker⁵”, case law recognizes that the person contemplated in the *Act* must have some reasonable nexus to the workplace. However, the immediacy of the *Act* requires contemplation of not whether the individual is a worker but on identifying unsafe workplaces or circumstances, and as such, the emphasis should be on the urgency of the notice and not on the status of the person involved.

Conclusion

In conclusion, ONA supports initiatives to clarify and assist workplace parties in fulfilling their obligations under the *Act* but is mindful of the consequences of those changes and how they may undermine the IRS.

ONA supports this initiative and hopes you will consider our concerns when drafting the consolidated regulation.

⁵ For example - *O. Reg 67/93 Health Care and Residential Facilities* states “If a worker...” whereas *R.R.O 851 Industrial Establishments* states “The written report required ...”