

ONTARIO NURSES' ASSOCIATION

SUBMISSION

ON

Proposed Amendments to the

***Occupational Health and Safety Act* contained in**

Bill 13, Supporting People and Businesses Act, 2021

TO

Ministry of Labour, Training and Skills Development

November 19, 2021



Ontario Nurses' Association

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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.

Statement of Beliefs: Occupational Health and Safety

ONA believes all of its members have the right to work in a healthy and safe work environment. ONA further believes in the pursuit of the highest degree of physical, mental and social well-being of workers in all occupations. As one of the largest health-care unions in the country, ONA exercises a strong leadership role in achieving progressively greater gains in the fields of occupational health and safety and human rights.

ONA appreciates the opportunity to provide stakeholder considerations on the proposed amendments that Bill 13, *Supporting People and Businesses Act, 2021*, will make to the *Occupational Health and Safety Act, RSO 1990 (OHSA)*.

Executive Summary

Investigations of Critical Injury or Death

ONA supports the amendments to Section 8 and 9 of the *OHSA*, which clarifies that findings of an investigation of a critical injury or death may be shared with an inspector. This is an effective amendment that will provide certainty to workplace parties in identifying how and to whom investigative findings can be shared.

Duties of Employers

ONA is supportive of amending legislation that provides opportunities to limit any employers' exemption from annually preparing and reviewing occupational health and safety policies and programs.

It is ONA's position that hazards and risks of injury are not determined by an employer's size but by the nature and complexity of its business activity.

Notices

The sharing of occupational injury information is integral within an effective Internal Responsibility System (IRS). Therefore, ONA welcomes amendments to *OHSA* Section 51 - Notice of Death or Injury provisions, which requires that employers provide the prescribed notice to the Joint Health & Safety Committee (JHSC) and trade union.

The omission in Section 51 of the *OHSA* of a statutory obligation to provide the prescribed notice to a JHSC and the trade union is a gap that undermines the workplace parties' ability to effectively review or proactively prevent recurrences of critical injury or death.

Additionally, ONA supports enhanced statutory powers of inspectors to require employers to proactively provide written notice of accident, explosion, fire, or violence causing injury to a director for specified periods of time.

In our view, the enhanced statutory powers of inspectors will provide an additional tool of enforcement that ensures an inspector will not have to wait for an accident or complaint from a workplace party before they become aware of a systemic failure of an employer's health and safety compliance efforts.

Lastly, ONA submits that the pandemic has identified gaps in the triggering definitions to provide notices to JHSCs and trade unions. The amendments to the *OHS*A 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 amendment will support and encourage increased awareness of communicable diseases and discussions of their risks in the workplace, as well as facilitating Justice Archie Campbell's recommendation to bridge the two silos of health and safety and infection prevention and control (IPAC).

Regulations

The enactment of a regulation that prescribes elements and a format for health and safety policies or programs is important to support and maintain stronger IRSs. An amendment that empowers the Ministry of Labour, Training and Skills Development (MLTSD) to enforce the format of these policies or programs will foster standardization and enhance compliance with the *OHS*A. ONA commends this addition to Section 70 of the *OHS*A because it will allow for greater certainty of policy and program contents and standardized presentation of information to ease their interpretation.

Investigations of Critical Injury or Death

Schedule 15 of Bill 13 is proposing an amendment to the *OHS*A (the *Act*) to clarify that a health and safety representative¹ or member of a committee who is designated² to investigate critical injuries or deaths may share with an inspector any findings of their investigation.

¹ Notice of accident, inspection by representative

*OHS*A 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.

² Notice of accident, inspection by committee member

*OHS*A 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

Employers have an obligation to provide prescribed written notices to the MLTSD, the committee, the health and safety representative and the trade union³. The worker health and safety representative or committee is empowered to investigate cases where a worker is critically injured or killed.

ONA supports increasing the clarity of the *Act* by providing statutory wording that explicitly states that findings of critical injury or fatality investigations may be shared with an inspector⁴, who is essentially an operational substitute for the director⁵. This provision will increase the certainty of a worker health and safety representative or committee member designated to investigate that their findings may lawfully be shared with a MLTSD inspector.

Duties of Employers

Bill 13 proposes to repeal subsection 25(4)⁶ of the *Act* and substitute with the following:

“Unless otherwise prescribed, clause (2) (j) does not apply with respect to a workplace at which five or fewer workers are regularly employed.” (emphasis added)

Section 25 (2)(j) of the *Act* states:

“prepare and review at least annually a written occupational health and safety policy and develop and maintain a program to implement that policy.”

In our view, hazards and risks of injury are not determined by an employer’s size but by the nature and complexity of its business activity, and as such, exemptions from developing health and safety policies should be removed and all employers be required to develop and maintain policies and programs to improve the health and safety of its workplace.

As such, ONA supports the substituted statutory language of Section 25(4) but urges that the subordinate legislation broaden the conditions for which Section 25(2)(j) applies.

³ Notice of death or injury

OHS 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.

⁴ Definitions (Act) “inspector” means an inspector appointed for the purposes of this *Act* and includes a Director.

⁵ Definitions (Act) “Director” means an inspector under this *Act* who is appointed as a Director for the purposes of this *Act*.

⁶ Duties of employers - Subsection 25(4) - clause (2)(j) does not apply with respect to a workplace at which five or fewer workers are regularly employed.

Notices

The 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 critical injuries, fatalities, accidents and occupational illness.

The absence in Section 51 of the *Act* to state a statutory obligation to provide the prescribed notice to a JHSC and trade union is a gap that undermines the workplace parties' ability to effectively review or proactively prevent recurrences of critical injury or death.

In the past, delays in receiving the notice have resulted in destruction of the accident scene before an investigation could be commenced. In some circumstances, a prolonged delay undermined the ability to effectively investigate, or made it impractical to investigate altogether, with the result that workplace hazards were not addressed.

Therefore, ONA welcomes clarifying the statutory obligation of employers to provide written notice of a critical injury or death to all workplace parties, including all trade unions. This will allow a health and safety representative or designated committee member to investigate the occurrence in a timely manner, and ensure their investigative findings will have a material contribution when assessing measures to prevent a recurrence of similar workplace injuries or deaths.

To further clarify and streamline when an employer is obligated to provide written notice, statutory language should state that awaiting medical confirmation of a critical injury⁷ or death is not required, because the immediacy of the *Act* requires identifying unsafe workplaces or circumstances. As such, the emphasis should be on the urgency of the notice and not on a medical confirmation of the injury involved.

Bill 13 proposes an amendment to provide inspectors with the power to require written notices from employers for certain periods of time⁸. The employer obligation to provide

⁷ O Reg 420/21 - Notices and Reports Under Sections 51 to 53.1 of the Act - Fatalities, Critical Injuries, Occupational Illnesses and Other Incidents.

Interpretation

1. (1) For the purposes of the Act and the Regulations, "critically injured" means an injury of a serious nature that,

- (a) places life in jeopardy,
- (b) produces unconsciousness,
- (c) results in substantial loss of blood,
- (d) involves the fracture of a leg or arm but not a finger or toe,
- (e) involves the amputation of a leg, arm, hand or foot but not a finger or toe,
- (f) consists of burns to a major portion of the body, or
- (g) causes the loss of sight in an eye; ("gravement blessé")

"medical attention" means treatment from a legally qualified medical practitioner or a registered nurse who holds an extended certificate of registration under the [Nursing Act, 1991](#).

⁸ Order for written notices to Director under s. 52 (1)

55.4 For the purposes of subsection 52 (1), an inspector may, in writing, order an employer to give written notice to a Director during such period as may be specified by the inspector.

written notice for accident, explosion, fire or violence causing injury⁹ is not triggered unless an inspector requires the employer to do so, but this requirement is generally linked to specific incidences and not periods of time.

ONA supports this enhanced statutory power of inspectors because it will allow for efficient oversight of employers with emerging failures in their health and safety programs. Additionally, it provides an ability to proactively monitor employers with frequent incidences for which the inspector or director would be unaware but for a complaint from the workplace parties.

Although ONA is supportive of the amended language to enhance notice provisions, we recognize and encourage further consideration of instances where a Section 52 notice should be required. In our view, the *Act* falls short in several circumstances and should be amended for:

- **Occupational Illness.** The obligation to provide statutory written notices should state and explicitly reference that the onset of occupational mental injury is an occupational injury or illness, as the case may be, for purposes of the *Act*.
- **Exposures.** Statutory written notices should be required when absences (e.g., self-isolation) from the workplace are due to the exposure of biological, including infectious diseases, or chemical agents in the workplace.
- **Consequences of failure.** Failure of employers to provide written notices pursuant to Part VII¹⁰ of the *Act* should be included in the schedule of offences to allow for robust compliance of these provisions.

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

Regulations

ONA supports the proposal to repeal Subsection 70(2) Paragraph 15 and substitute with the following:

⁹ **Notice of accident, explosion, fire or violence causing injury**

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:

1. The committee, the health and safety representative and the trade union, if any.
2. The Director, if an inspector requires notification of the Director.

¹⁰ **Occupational Health and Safety Act, RSO 1990**
Part VII – Notices (51-53.1)

“15. prescribing elements that any policy or program required under this *Act* must contain and the format that the policy or program must be in”

This amendment will provide future opportunities to tailor elements of workplace programs, such as in response to serious injuries in the workplace. This proposal would enhance the role of workplace parties following injuries at work by modernizing workplace roles, obligations and processes.

Enacting a regulation that prescribes elements and a format for health and safety policies or programs will support and maintain stronger IRSs. Empowering the MLTSD to enforce the format of these policies or programs will foster standardization and enhance compliance with *OHS*A. ONA commends this addition to Section 70 of *OHS*A, because it will allow for greater certainty of policy and program contents and standardized presentation of information, to ease interpretation of the policy and programs.

Conclusion

In conclusion, ONA supports initiatives to clarify and assist workplace parties in fulfilling their obligations under the *Act* and looks forward to a true and equal alignment of sound principles and best practices within its statutory framework.

The amendment for notices will support well-functioning JHSCs to monitor IRS performance and make recommendations for improvements. However, enforcement of the *Act* is a key component of any safety system that requires the MLTSD to use the powers of the *Act* unfettered from political or employer influence.

ONa supports these amendments and urge you to consider our concerns when amending the *OHS*A.